

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

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4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown

14 & Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22 DEPOSITION OF RICHARD M. LOWTHER

23 Volume I, Pages 1 - 248

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1 (The following is the deposition of RICHARD
2 M. LOWTHER, taken pursuant to Notice of Taking
3 Deposition, under Rule 30.02(f), at the offices of
4 Robins, Kaplan, Miller & Ciresi, 1801 K Street N.W.,
5 Washington, D.C., commencing at approximately 8:32
6 o'clock a.m., May 7, 1997.

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1 P R O C E E D I N G S

2 (Witness previously sworn.)

3 THE REPORTER: The witness has been
4 previously sworn.

5 MS. WIVELL: No. I'd like the witness
6 sworn again, please.

7 (Witness resworn.)

8 RICHARD M. LOWTHER
9 called as a witness, being first duly
10 sworn, was examined and testified as
11 follows:

12 ADVERSE EXAMINATION

13 BY MS. WIVELL:

14 Q. Would you please tell the ladies and gentlemen
15 your name.

16 A. Richard Lowther.

17 MS. WIVELL: Before we go any further,
18 right before this deposition started I asked if
19 everyone in the room had signed the Minnesota
20 protective order. Mr. Schneider advises me that he
21 and the witness have not done so. He is going to
22 make arrangements to have the protective order faxed
23 here so that he and the witness can sign it. But in
24 the meantime Mr. Schneider informed me that he and
25 the witness would agree to be bound by Exhibit A to

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1 the protective order. Is that right, Mr. Schneider?

2 MR. SCHNEIDER: Yes, that is right, Ms.

3 Wivell.

4 MS. WIVELL: In the meantime, in light of
5 the fact that there's going to be confidential
6 information which may be used in this deposition, I
7 asked if everyone else in the room has signed the
8 Minnesota protective order. I would ask that
9 question again on the record. And if anyone has not
10 signed the Minnesota protective order, I would like
11 you to identify yourself by name.

12 (No response.)

13 MS. WIVELL: No one has responded, so I
14 think it is fair to assume that either everyone has
15 signed the Minnesota protective order, or they are
16 misrepresenting to us by their silence that they have
17 done so.

18 BY MS. WIVELL:

19 Q. Mr. Lowther, you and I have met before; correct?

20 A. Yes.

21 Q. You are here because of a Rule 30.02(f)
22 deposition notice which was served on Brown &
23 Williamson; correct?

24 A. Yes.

25 Q. I'm going to show you that deposition notice and

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1 ask if you have seen it before.

2 (Plaintiffs' Exhibit 55 was marked
3 for identification.)

4 BY MS. WIVELL:

5 Q. Sir, showing you what's been marked as
6 Plaintiffs' Exhibit 5 -- 55, the notice of taking
7 deposition, have you seen that document before?

8 A. Yes, I have.

9 Q. And it notices the deposition of Brown &
10 Williamson Tobacco Corporation; does it not, sir?

11 A. Yes, it does.

12 Q. And according to the second page, this
13 deposition notice requires Brown & Williamson to
14 designate one or more representatives who shall be
15 qualified to testify as to matters known or
16 reasonably available to Brown & Williamson concerning
17 the supplemental responses to certain plaintiffs'
18 interrogatories to Brown & Williamson Tobacco
19 Corporation served February 11th, 1997; is that
20 correct, sir?

21 MR. SCHNEIDER: Objection, form.

22 A. Yes, it is.

23 Q. And sir, are you here prepared today to testify
24 as Brown & Williamson's spokesperson in this
25 deposition?

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1 A. Yes, I am.

2 Q. You understand that the deposition we're taking
3 here today is pursuant to Rule 32 -- 30.02(f) of the
4 Minnesota Rules of Civil Procedure?

5 A. Yes, I do.

6 Q. Do you understand that Exhibit 55 requires Brown
7 & Williamson to produce a person qualified to testify
8 as to matters known or reasonably known to Brown &
9 Williamson concerning the interrogatory answers which
10 were filed February 11th, 1997?

11 MR. SCHNEIDER: Objection, form.

12 A. Yes, I do.

13 Q. Do you understand that the deposition notice is
14 to Brown & Williamson, not to you personally?

15 A. Yes.

16 Q. Do you understand that you have been designated
17 as the corporate representative of Brown & Williamson
18 to speak on its behalf at this deposition?

19 A. Yes, I do.

20 Q. Do you understand that at this deposition you
21 are speaking for Brown & Williamson?

22 A. Yes, I do.

23 Q. Have you consented to speak for Brown &
24 Williamson in this deposition?

25 A. Yes, I have.

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1 Q. And you understand that your testimony here
2 today is binding on Brown & Williamson.

3 A. Yes.

4 Q. And you have authority to speak on Brown &
5 Williamson's behalf during this deposition?

6 A. Yes.

7 Q. So for purposes of this deposition today you're
8 Brown & Williamson's spokesperson; correct?

9 A. Yes.

10 Q. Do you understand that the answers which you
11 give in this deposition to the questions I ask must
12 be answered fully based on not only what you know
13 personally but also on knowledge available to Brown &
14 Williamson?

15 MR. SCHNEIDER: Objection, form.

16 A. To the extent that I am able to do that, yes.

17 Q. Do you understand that the answers which you
18 give in this deposition to the questions I ask must
19 be answered completely based not only on what you
20 know personally but also on knowledge available to
21 Brown & Williamson?

22 MR. SCHNEIDER: Same objection.

23 A. Yes.

24 Q. Do you understand that if I ask a question with
25 the word "you" in it, it means both you personally

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1 and Brown & Williamson?

2 MR. SCHNEIDER: Objection, form.

3 A. If you -- if you decide to make that definition
4 of "you," that's -- that's fine.

5 Q. Well can you agree that -- that if I ask a
6 question with the word "you" in it, that it means
7 both you personally and Brown & Williamson?

8 A. Yes, I can agree to that.

9 Q. Do you understand that your answers that you
10 give today are based not only on what you know
11 personally but what you learned in preparation for
12 this deposition?

13 A. Yes.

14 Q. Is there anyone else who is better qualified or
15 more suitable to testify regarding the subjects that
16 are listed in Exhibit 55?

17 A. I don't believe so.

18 Q. Now from time to time I'm going to be referring
19 to the -- the lawsuit brought on behalf of the State
20 of Minnesota and Blue Cross Blue Shield against Brown
21 & Williamson and others as "this case." Can we agree
22 that when we refer to "this case," that's what we
23 mean?

24 A. Yes.

25 Q. Thank you.

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1 Can we also agree that unless my questions ask
2 for information about interrogatory answers filed in
3 another case, that all of my questions refer to this
4 case?

5 A. Yes.

6 Q. Sir, are you the person most knowledgeable about
7 the interrogatory answers that Brown & Williamson
8 filed February 11th, 1997?

9 MR. SCHNEIDER: Objection, form.

10 A. I'm the person that has been designated to come
11 here today. I have prepared to appear today and made
12 myself acquainted with the contents of the responses
13 in order to do that.

14 MS. WIVELL: Move to strike as
15 non-responsive.

16 Q. Sir, are you the person most knowledgeable about
17 the subjects in the interrogatory that were filed on
18 February 11th, 1997?

19 MR. SCHNEIDER: Objection, asked and
20 answered.

21 A. My response is: In overview I have a collection
22 of knowledge that is adequate to come and -- and
23 present the company's knowledge at this deposition.
24 On an individual element-by-element basis there may
25 be others who have more knowledge on specific

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1 instances, but I have prepared today to come here and
2 present the company's knowledge.

3 Q. Sir, I understand you have prepared to come here
4 today, but I'm asking who is the most knowledgeable
5 person about the interrogatory answers that were
6 filed on February 11th, 1997.

7 MR. SCHNEIDER: Objection, form, asked and
8 answered, argumentative.

9 A. I have prepared myself to come and submit
10 responses to this deposition today, and because I've
11 done that, I am the most prepared -- I am -- I am the
12 person that is most knowledgeable in this case.

13 Q. Well let me ask you this: Who did you talk to
14 in order to learn the information that you came here
15 when you were preparing? Who did you talk to to find
16 out that information?

17 A. I have spent several days with our outside
18 counsel preparing myself for this deposition today.

19 Q. And who did you talk to?

20 A. I talked to Mr. Schneider, I talked to Ms. Fox,
21 I talked to Dan Willoughby, I talked to Ernest
22 Clements.

23 Q. Anyone else?

24 A. There may be others from time to time that I
25 have -- have talked to in preparation for this. I

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1 can't recall any significant conversations now.

2 Q. All right. Well significant or not, I would
3 like to know the names of those other people you
4 talked to.

5 A. Jody Warner.

6 (Discussion off the stenographic record.)

7 A. I think that's a comprehensive list.

8 Q. That's everyone that you can remember talking to
9 in preparation for this deposition today?

10 A. Yes.

11 Q. No one else.

12 A. That I can remember.

13 Q. Sir, you understand that the interrogatory
14 answers we're here today to talk to -- or to talk
15 about incorporate by reference previous answers that
16 have been filed by Brown & Williamson; correct?

17 A. It's my understanding that I am here to talk
18 about the contents of the interrogatory response.

19 Q. And sir, those interrogatory responses
20 incorporate by reference other responses that were
21 filed before this set that we're talking about was
22 filed; correct?

23 A. Yes, it does.

24 Q. Did you review those interrogatory answers
25 before you came here today?

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1 A. Yes, I did.

2 Q. Now one of those answers lists people who are
3 knowledgeable about the subjects of document transfer
4 and -- and destruction; don't -- don't they?

5 A. Yes, it does.

6 MR. SCHNEIDER: Objection to form.

7 Q. Did you talk to any of the people who are listed
8 in the prior interrogatory answers in preparation for
9 your deposition today?

10 A. No, I did not.

11 Q. Just so we're clear here, you didn't talk to Mr.
12 Grass in preparation for your deposition today?

13 A. I did not.

14 Q. Did you talk to Mr. Eckman in preparation for
15 your deposition today?

16 A. No, I did not.

17 Q. Did you talk to Mr. Glassner in preparation for
18 your deposition today?

19 A. No.

20 Q. Did you talk to Mr. McGraw in preparation for
21 your deposition today?

22 A. No, I did not.

23 Q. Did you talk to Mr. Frick in preparation for
24 your deposition today?

25 A. No, I did not.

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1 Q. Did you talk to Mr. Brown in preparation for
2 your deposition today?

3 A. No.

4 Q. Now you understand that those are all
5 individuals who were listed in preceding answers to
6 interrogatories as B&W employees with knowledge
7 relating to document retention; don't you, sir?

8 A. Yes, I do.

9 Q. Why didn't you talk to those people?

10 A. My preparation constituted discussions with
11 outside counsel. Brown & Williamson had as a matter
12 of practice asked outside counsel to prepare the
13 interrogatory response, and outside counsel have
14 informed me of the facts and the procedures and the
15 actions they took in order to prepare those -- that
16 response, and therefore I feel that I'm able to come
17 here and -- and share Brown & Williamson's knowledge
18 about the -- this -- the response.

19 Q. Sir, those six people that I mentioned, Mr.
20 Grass, Mr. Eckman, Mr. Glassner, Mr. McGraw, Mr.
21 Frick and Mr. Brown, are they still Brown &
22 Williamson employees?

23 A. Could you read the list again, please?

24 Q. Grass, Eckman, Glassner, McGraw, Frick and
25 Brown.

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1 A. I believe they are all or once were Brown &
2 Williamson employees.

3 Q. So you could have talked to these people in
4 preparation for your deposition today; couldn't you?

5 A. I could have done so.

6 Q. Several of them work in the same building you
7 work in; don't -- don't they?

8 A. Yes, they do.

9 Q. Same floor?

10 A. No.

11 Q. But you could have gone to their offices and
12 asked them what they knew about document retention
13 since they were listed as people with knowledge in
14 Brown & Williamson's interrogatory answers; correct?

15 A. I could have done that. However, I felt that it
16 was not a necessary step for me to do that in order
17 to prepare for this deposition today.

18 Q. Well, had these people written reports that
19 were -- let me strike that and begin again.

20 Had these people written reports that you
21 reviewed in preparation for your deposition today?

22 A. I don't believe that they have.

23 Q. Have outside counsel written reports about
24 interviews with these people that you reviewed in
25 preparation for your deposition today?

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1 A. I have not reviewed any reports prepared by
2 outside counsel during interviews with those people.

3 Q. Have outside counsel written reports of
4 interviews with any of these individuals?

5 A. I believe they may have written some interview
6 notes.

7 Q. All right. Did you ask them what they --
8 whether they had any interview notes of these people
9 who had been listed by Brown & Williamson as
10 employees with knowledge relating to document
11 retention?

12 A. I don't recall whether I asked them.

13 Q. Did you see any reports?

14 A. No, I did not.

15 Q. Were any reports written -- read to you in part
16 or in whole?

17 A. No, they were not.

18 Q. Did you see any of the individuals that -- that
19 are on this list, Mr. Grass, Mr. Eckman, Glassner,
20 McGraw, Frick and Brown, while you were preparing for
21 this deposition?

22 A. No, I did not.

23 Q. You didn't see them in the hallway?

24 A. No, I did not.

25 Q. Didn't see any of them.

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1 You could have picked up the phone and asked
2 them about the information that they had concerning
3 this subject; couldn't you?

4 MR. SCHNEIDER: Objection to the form,
5 asked and answered.

6 A. I do not believe it was necessary to speak
7 directly with these people to prepare myself for this
8 deposition today.

9 Q. Sir, I don't believe that answers my question.
10 You could have picked up the phone and asked
11 them about the information they had concerning this
12 subject; couldn't you, sir?

13 MR. SCHNEIDER: Objection.

14 A. I did not believe it was necessary for this
15 deposition, but I could have called them.

16 Q. And you didn't; did you?

17 A. I did not.

18 Q. Now you know that in a previous answer to
19 interrogatories concerning the subject of document
20 retention and destruction which was incorporated by
21 reference into the answers dated February 11th, 1997,
22 there are other individuals who were listed as having
23 knowledge relating to subjects addressed in B&W's
24 response; correct?

25 A. Yes.

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- 1 Q. Those people included Carol Lincoln; right?
- 2 A. Yes.
- 3 Q. And they included Ernie Peebles; right?
- 4 A. Ernie Peebles, yes.
- 5 Q. Peebles, pardon me.
- 6 And they included Mr. Riehl; right?
- 7 A. Yes.
- 8 Q. They included Mr. Wells; correct?
- 9 A. Yes.
- 10 Q. They also included Mr. Eckman again; right?
- 11 A. Right.
- 12 Q. Did you talk to any of those people in
- 13 preparation for your deposition today?
- 14 A. I did not.
- 15 Q. Again, these are all people who work with Brown
- 16 & Williamson or for Brown & Williamson; correct?
- 17 A. Yes, they do.
- 18 Q. They all work in your building that you work in
- 19 in Louisville; correct?
- 20 A. No, not all of them do. Some of them are based
- 21 in Macon, Georgia.
- 22 Q. Okay. Who is based in Macon, Georgia?
- 23 A. Carol Lincoln and Tilford Riehl. That may be
- 24 all. But if you'd like to read the names again, I'll
- 25 confirm that.

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1 Q. Okay. Carol Lincoln, Ernie Pebbles, Tilford
2 Riehl, Kendrick Wells and Mr. Eckman.

3 A. Just those two work in Macon.

4 Q. And so we're clear here, Carol Lincoln is the
5 librarian for the R&D division; isn't she?

6 A. Yes, she is.

7 Q. And Ernie Pebbles is senior vice-president
8 of government affairs for Brown & Williamson;
9 correct?

10 A. That's right.

11 Q. Tilford Riehl is vice-president of research and
12 development; correct?

13 A. Yes.

14 Q. Kendrick Wells is assistant general counsel;
15 right?

16 A. Yes.

17 Q. And Mr. Eckman is vice-president and controller
18 of Brown & Williamson; right?

19 A. That's correct.

20 Q. And you didn't talk to any of these people in
21 preparation for your deposition today.

22 MR. SCHNEIDER: Objection to form.

23 A. That's correct.

24 Q. You didn't call them up and ask them what
25 information they had; did you?

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1 MR. SCHNEIDER: Objection to the form. You
2 mean him personally; correct?

3 MS. WIVELL: I'm -- I'll rephrase the
4 question.

5 Q. Sir, you did not personally call up any of these
6 people that I have just named who are listed as
7 having knowledge on this subject and ask them what
8 they knew; did you?

9 A. I did not believe it was necessary to prepare
10 myself for this deposition, and I did not call them
11 personally.

12 MS. WIVELL: Move to strike as
13 non-responsive.

14 Q. My question is, sir: You did not call them up
15 and talk to them about the information that they had
16 that caused them to be listed in this interrogatory
17 answer; did you?

18 MR. SCHNEIDER: Objection, asked and
19 answered, argumentative.

20 A. I did not.

21 Q. Why didn't you think it was important to talk to
22 these people who were listed as having knowledge?

23 MR. SCHNEIDER: Objection to the form.

24 A. I prepared myself for this deposition through
25 discussions and through review of the interrogatory

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1 response. My discussions were with outside counsel
2 because Brown & Williamson had employed outside
3 counsel to prepare the interrogatory response and to,
4 through a substantial effort, elicit the facts and
5 prepare the interrogatory response.

6 Q. All right. Now I understand why you talked with
7 outside counsel. I want to know why you didn't talk
8 with these people who are your co-employees to ask
9 them about the information they had to make sure that
10 what you were getting from the lawyers was correct.

11 MR. SCHNEIDER: Objection to the form,
12 asked and answered.

13 A. I did not feel it was necessary to speak
14 directly to those employees in order to prepare
15 myself for this deposition today.

16 Q. Why not?

17 A. Because I was able to speak with the outside
18 counsel who had the facts that I felt were necessary
19 for me to prepare myself.

20 Q. All right. How did you know that outside
21 counsel had the facts that were necessary to prepare
22 you for my questions today?

23 A. Because outside counsel informed me as to the
24 procedures they adopted to prepare the interrogatory
25 responses, and I was satisfied with those -- that

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1 information that they shared with me.

2 Q. Sir, are you a lawyer?

3 A. No, I am not.

4 Q. Are you trained as a lawyer?

5 A. No.

6 Q. Were you trained as a solicitor or barrister?

7 A. No.

8 Q. Do you have any legal training at all?

9 A. No.

10 Q. These last few people that we just talked about,
11 Ms. Lincoln, Ernie Pebbles, Tilford Riehl, Kendrick
12 Wells and Mr. Eckman, were interviews conducted of
13 these people in preparation for the deposition?

14 MR. SCHNEIDER: Object to the form.

15 A. In my preparation for the deposition, I did not
16 interview these people.

17 Q. Who did?

18 A. There were four King & Spalding individuals who
19 were assigned to collecting the information for this
20 case, and during the course of preparing the
21 interrogatory, they will have spoken to those people.

22 Q. And those people --

23 And the four King & Spalding lawyers made notes
24 of their interviews with these people; correct?

25 A. I understand they may have made some notes.

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1 Q. Well, did you ask the lawyers whether there were
2 interview notes of the individuals who had been
3 named?

4 A. As I said earlier, I don't recall whether I
5 asked that question.

6 Q. Well did you come to learn somehow that there
7 were interview notes of the people who were listed in
8 B&W's interrogatory answers having knowledge
9 concerning document transfer and destruction?

10 A. Yes, I did understand that King & Spalding did
11 prepare some interview notes.

12 Q. And how did you come to that understanding?

13 A. In preparation for this deposition, it was an
14 issue that was -- was raised.

15 Q. And how was it raised?

16 A. It was raised in general discussion about the
17 requirements of coming and -- and presenting the
18 deposition.

19 Q. What general discussion?

20 A. During the last several days I have spent
21 reviewing the interrogatory response with outside
22 counsel, and it was an issue that was discussed at
23 some time during the last few days.

24 Q. And you learned during that discussion that
25 there were interview notes of the people who were

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1 listed on the prior interrogatory answers having
2 knowledge about document destruction and -- and
3 transfer; correct?

4 A. It's my understanding that there are some
5 interview notes. I cannot tell you whether they were
6 interview notes for every individual listed.

7 Q. Sir, in preparation for your deposition today,
8 you wanted to -- to fully prepare; didn't you?

9 A. Yes, I did, to the extent that it's reasonably
10 possible to do so.

11 Q. Okay. To the extent that it's reasonably
12 possible to do so.

13 Did you ask to read the notes in preparation for
14 this deposition?

15 A. No, I did not.

16 Q. Well you could have done so; correct?

17 A. I did not feel it was necessary in order to
18 prepare for this deposition to review any notes of
19 that nature.

20 Q. So let me understand. There are notes about
21 interviews made with people, interviews of people who
22 have factual knowledge that you know that exist, and
23 you didn't think it was necessary in your preparation
24 to read those notes; is that right?

25 MR. SCHNEIDER: Objection to the form.

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1 A. As I said earlier, I did not feel it was
2 necessary to review those notes in order to prepare
3 for this deposition.

4 Q. So the answer to my question is yes, you didn't
5 feel it was necessary. Isn't that right?

6 A. That's correct.

7 Q. And you also didn't feel that it was necessary
8 for your preparation here today to talk to those
9 people; did you?

10 MR. SCHNEIDER: Objection.

11 A. That's correct.

12 Q. You thought it was better to talk to lawyers; is
13 that right?

14 A. It's --

15 My response to that is that Brown & Williamson
16 engaged its outside counsel to prepare the
17 interrogatory response, and they were, therefore, the
18 people that had the most knowledge as to the facts of
19 the preparation and -- and pulling together of the
20 response.

21 MS. WIVELL: Move to strike as
22 non-responsive.

23 Q. Sir, you didn't feel it was necessary for your
24 prepare today here to talk with people with facts,
25 you thought it was better to talk to lawyers; is that

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1 right?

2 MR. SCHNEIDER: Objection to the form,
3 argumentative, asked and answered.

4 A. My response is that I talked with the lawyers
5 who Brown & Williamson had engaged to prepare the
6 response and who had solicited those facts from the
7 range of interviews with a large number of people
8 within the company. In order to prepare for this
9 deposition I spoke to those attorneys because they
10 were the ones who had the facts collected in order to
11 prepare me for the deposition.

12 Q. Okay. Just so we're clear here, those attorneys
13 didn't have any first-hand facts about document
14 destruction or -- or transfer; did they?

15 A. I can't say that they had no first-hand facts.
16 They may have.

17 Q. Okay. But the interviews that you're talking
18 about, they went out and they talked to people who
19 had facts who were listed in that interrogatory as
20 having facts; correct?

21 A. Yes, they did.

22 Q. Okay. And you thought it was better to talk to
23 lawyers who had collected these facts than talk to
24 the people who had them first-hand; right?

25 A. I did. As a practical matter I did not feel

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1 that it was a necessary requirement for me to go and
2 reperform 77 interviews in preparation for this
3 deposition today.

4 Q. Do you understand that there were 77 interviews
5 that were done concerning document transfer and
6 destruction?

7 MR. SCHNEIDER: Object to the form.

8 A. I understand that there are some 77 individuals
9 listed in -- in the interrogatory response, and those
10 individuals were contacted in connection with
11 collecting the interrogatory-response information.

12 Q. Well, and I'm trying to find out if there were
13 77 and only 77 or if there were actually more
14 interviews that somehow just didn't get listed in the
15 interrogatory answers.

16 A. It's my understanding that 77 people were
17 interviewed.

18 Q. I understand 77 were interviewed. Were there
19 more than 77 interviewed?

20 A. I don't believe so.

21 Q. So the only people that were interviewed,
22 correct me if I'm wrong, are the 77 people listed on
23 page two of what's been previously marked as Exhibit
24 26; is that right?

25 MR. SCHNEIDER: Objection to the form,

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1 misleading.

2 A. As indicated in the interrogatory response, as
3 well as 77 people there were inquiries made to
4 personnel at law firms, and Pitney Bowes employees.

5 Q. All right. But the 77 that are listed on page
6 two of --

7 Exhibit 26, is it, Mr. Lowther?

8 A. It is Exhibit 26.

9 Q. All right. Let me begin again.

10 On page two of Exhibit 26 there are 77 names
11 listed; correct?

12 A. That's correct.

13 Q. And when we've been talking about 77 people who
14 were interviewed, we've been referring to those
15 people who are listed on page two of Exhibit 26;
16 right?

17 A. That's correct.

18 Q. Are these the only people who are Brown &
19 Williamson employees or former employees who were
20 interviewed concerning document destruction or
21 document transfer?

22 MR. SCHNEIDER: Objection to the form,
23 misleading.

24 A. It is my understanding that these are the
25 individuals to whom inquiries were addressed during

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1 the course of preparing this interrogatory response.

2 There may have been others who may have provided
3 information indirectly or directly, but these are
4 the -- the -- the main individuals.

5 Q. Now the 77 people who are listed on page two of
6 Exhibit 26, were they all interviewed?

7 A. Yes, I believe they were.

8 Q. Are there any other Brown & Williamson employees
9 who were interviewed who are not listed on page two
10 of Exhibit 26?

11 MR. SCHNEIDER: Objection to the form,
12 misleading.

13 A. I don't believe that there were additional
14 individuals that were interviewed. As I said
15 earlier, there may have been others who shared
16 information with perhaps these interview -- with
17 these people during the course of the interview, but
18 I don't believe that there were any other substantial
19 interviews undertaken.

20 Q. All right. Based on your preparation for today,
21 what other people may have provided information but
22 whose names don't appear here?

23 A. I'm not aware of any.

24 Q. Sir, do you know for a fact one way or another
25 whether there are individuals who are Brown &

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1 Williamson employees or former employees who were
2 interviewed whose names do not appear on page two of
3 Exhibit 26?

4 A. I don't believe that there are additional
5 individuals, but I don't know that for certain.

6 Q. Will you find out and report back to me
7 tomorrow?

8 A. Yes, I will.

9 MR. SCHNEIDER: Ms. Wivell, a momentary
10 interruption on that note. Did you receive from us a
11 letter with follow-up response from last deposition
12 that we sent out --

13 MS. WIVELL: I personally did not.

14 MR. SCHNEIDER: -- yesterday?

15 MS. WIVELL: It was sent to my office, I
16 understand, but I have not seen it.

17 MR. SCHNEIDER: All right. I -- we have
18 one here. One was being delivered to our Washington
19 office. I'll get one to you so that you can look at
20 it.

21 MS. WIVELL: Thank you. I appreciate it.

22 THE REPORTER: Let's go off the record just
23 a moment, please.

24 (Discussion off the record.)

25 BY MS. WIVELL:

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1 Q. Sir, you mentioned that interviews were
2 conducted by four King & Spalding lawyers. Do you
3 recall that?

4 A. Yes, I do.

5 Q. Who were the four King & Spalding lawyers who
6 conducted the interviews?

7 A. Mr. Duffy, Robyn Iler, Thomas Beckett, and
8 another whose name escapes me.

9 Q. Will you find out that fourth name and get back
10 to me tomorrow?

11 A. Yes, I will.

12 Q. You talked a little bit about what you've done
13 in preparation for your deposition today. What else
14 did you do?

15 A. I believe I've described that I met with outside
16 counsel over three, four days; I read the
17 interrogatory response and the attachments; I read
18 the interrogatory response of American and of B.A.T.
19 Industries; I reviewed some flip charts prepared by
20 outside counsel; I talked with the individuals that I
21 told you about earlier; I talked with Robyn Iler, who
22 I may have not informed you about earlier.

23 Q. Anything else?

24 A. I have reviewed correspondence between in-house
25 counsel and plaintiffs' lawyers.

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1 Q. Anything else?

2 A. And I have had read to me or reviewed documents
3 of relevance in this case.

4 Q. Anything else?

5 A. Not that I can recall at this time.

6 Q. How long did you spend in preparation for your
7 deposition today?

8 A. Some four days in total.

9 Q. How many hours a day?

10 A. I would say it varied, but let's say some 40
11 hours or so.

12 Q. Fourteen?

13 A. Four oh.

14 Q. My question was how many hours a day.

15 A. Well, that would average 10 hours a day.

16 Q. Is there any other time that you spent preparing
17 for your deposition today?

18 A. No.

19 Q. When did you first learn that you were going to
20 be the deponent for this deposition?

21 A. Sometime in March.

22 If I can add to the list of -- of items I
23 reviewed preparing for this deposition today, I also
24 reviewed the transcript of my earlier deposition.

25 Q. Now have we talked about all of the things that

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1 you have done in preparation for your deposition
2 today?

3 A. I think so.

4 Q. All of the people you talked to were outside
5 counsel for Brown & Williamson; is that right?

6 A. Yes, they were.

7 Q. I'm sorry?

8 A. Yes, they were.

9 Q. So is it fair to say that you did not speak in
10 preparation for your deposition today to a single
11 Brown & Williamson employee?

12 A. Actually I would like to correct that. I did
13 speak to Kendrick Wells.

14 Q. As part of your preparation?

15 A. Yes.

16 Q. Now Mr. Wells is one of the people who was
17 listed on that interrogatory as a person with
18 knowledge; correct?

19 A. Yes, he is.

20 Q. Why didn't you mention that you'd spoken with
21 him when I asked you about that earlier?

22 MR. SCHNEIDER: Object to the form,
23 argumentative.

24 A. Because it had escaped my memory at the time.

25 Q. What did you say to Kendrick Wells?

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1 A. We talked about preparation for the deposition
2 today. We talked to some extent about the situation
3 of the move of -- of our R&D facilities in the
4 mid-1980s as contextual background to a memorandum
5 that's included in -- in the interrogatory response.

6 Q. Anything else that you and Mr. Wells talked
7 about?

8 A. No.

9 Q. Was the context the deadwood memo that's
10 included in the exhibits to the interrogatory which
11 is Exhibit 26?

12 MR. SCHNEIDER: Object to the form.

13 A. Exhibit 26, this one.

14 It's not attached to this copy. I'm referring
15 to Mr. Ken -- Mr. Kendrick Wells' memorandum of
16 January the 17th, 1985.

17 Q. And in that memo he refers to moving the
18 deadwood out of the R&D files; isn't that correct?

19 A. Yes, he does.

20 Q. And you talked with him specifically about that
21 memo.

22 A. I talked to him specifically about the
23 background circumstances within the company at the
24 time he wrote that memo.

25 Q. Did you have the memo with you when you talked

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- 1 with him?
- 2 A. Yes, I did.
- 3 Q. Did you talk to him on the phone or in person?
- 4 A. In person.
- 5 Q. What did Mr. Wells tell you about that memo?
- 6 A. He discussed his recollection of the timing of
- 7 the move of the R&D people.
- 8 Q. What did he say?
- 9 A. He clarified the duration of the time that it
- 10 took for the planning of the move and for that move
- 11 to actually take place.
- 12 Q. And what if any relationship did this move have
- 13 to his writing that memo?
- 14 A. The move was referenced in his memo.
- 15 Q. Is there anything else Mr. Wells told you about
- 16 that memo?
- 17 A. No.
- 18 Q. Did you ask him anything else about that memo?
- 19 A. No, I did not.
- 20 Q. Did you talk to B&W's outside lawyers about that
- 21 memo?
- 22 A. Yes, I did.
- 23 Q. Is there anything else that you talked with Mr.
- 24 Wells about?
- 25 A. No.

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1 Q. Now I'd like to go over what you said you had
2 done in preparation for your deposition today. I
3 think you said you met with outside counsel; is that
4 correct?

5 A. Yes, I did.

6 Q. For how long did you meet with outside counsel?

7 A. For some three and a half days.

8 Q. Let me understand. Is it your testimony that
9 you spent about a total of 40 hours preparing for
10 this deposition?

11 A. Somewhere in that region, that's correct.

12 Q. And of that total of 40 hours, you spent three
13 and a half days with outside counsel?

14 A. Yes, I did.

15 Q. Does that time include the time you spent
16 reading the various things you mentioned?

17 A. No, it did not.

18 Q. So approximately how many hours did you spend
19 meeting with outside counsel?

20 MR. SCHNEIDER: Objection, asked and
21 answered several times.

22 A. I replied that I met with outside counsel for
23 about three and a half days; let's say 30 hours.

24 Q. All right. You said you'd read various things
25 in preparation for your deposition today. Do you

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1 recall that, sir?

2 A. Yes, I did.

3 Q. You said you read various interrogatory answers;

4 is that right?

5 A. Correct.

6 Q. You said you read materials from British

7 American Tobacco and American Tobacco Company; is

8 that right?

9 A. B.A.T.

10 MR. SCHNEIDER: Objection.

11 A. From -- from B.A.T. Industries and American

12 Tobacco Company, yes.

13 Q. You also read your deposition from the last

14 30.02(f) deposition that we took of Brown &

15 Williamson?

16 A. That's correct.

17 Q. Is there anything else you read?

18 A. I believe I indicated some other items, too.

19 Q. Was that all in the --

20 (Beeping computer sound.)

21 MR. SIPKINS: Sorry.

22 MS. WIVELL: Let me start again.

23 Q. Was that all in the 30 hours that that time --

24 I'm sorry. Bear with me.

25 Was that reading, was that included in the 30

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1 hours you talked about that you met with outside
2 counsel?

3 A. Some of it was, yes, but not all of it was.

4 Q. Now you said that you reviewed some flip
5 charts. Is that right?

6 A. That's correct.

7 Q. All right. Tell me what you -- what was on the
8 flip charts.

9 A. They were charts prepared during the course of
10 the time I spent with outside counsel to provide
11 background information to help me prepare.

12 Q. All right. What kind of background information
13 was provided?

14 A. Well I can recall an outline of the -- the
15 interview process, an outline of -- of the -- the way
16 that King & Spalding approached putting together the
17 interrogatory response by way of reviewing databases,
18 conducting interviews, talking with outside counsel.

19 Q. Outside counsel?

20 A. Right.

21 Q. All right. Anything else the flip charts
22 included?

23 MR. SCHNEIDER: Object to the question on
24 this grounds and instruct Mr. Lowther not to discuss
25 any privileged contents of flip charts. You can

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1 discuss facts conveyed to you, but the flip charts
2 themselves are privileged work-product information of
3 counsel.

4 A. My response as to the facts conveyed to me, I
5 remember a chart of the layout of Hill Street
6 reflecting the different elements and the timing of
7 transfer of documents between locations within Hill
8 Street.

9 Q. Anything else?

10 A. I recall charts of timing of certain events at
11 the company relating to legal holds.

12 (Discussion off the stenographic record.)

13 Q. Any --

14 A. And other -- and other events as described in
15 the interrogatory response.

16 Q. Anything else?

17 A. Not that I can recall.

18 Q. How many flip charts were there?

19 A. Perhaps a half dozen.

20 Q. What other events were included on the flip
21 charts?

22 A. What other events than legal holds?

23 Q. Yes.

24 A. Events described in the interrogatory response,
25 such as the period of time that the company

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1 established a -- an exercise to bring its records
2 into condition of agreement with its -- its policies
3 in late 1994.

4 Q. Anything else?

5 A. Not that I can recall.

6 Q. Now you mentioned that during this preparation
7 you read or had read to you documents in this case;
8 is that correct?

9 A. Yes.

10 Q. What documents did you read?

11 A. I believe in the main they were documents which
12 you had identified would be produced as exhibits in
13 the course of this deposition.

14 Q. Anything else?

15 A. Not that I can recall.

16 Q. You said you had documents read to you; is that
17 true?

18 A. Yes, it is.

19 Q. Who read you those documents?

20 A. Mr. Schneider.

21 Q. Anyone else?

22 A. Not that I can recall.

23 Q. What documents did he read to you from?

24 A. I don't recall.

25 Q. What do you recall about the portions of

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1 documents that he read to you?

2 A. I don't recall very much at all at this time.

3 Q. Did he read to you from interviews that King &

4 Spalding lawyers had conducted?

5 A. No, I don't believe he did.

6 Q. Did you read the interviews yourself?

7 MR. SCHNEIDER: Objection, asked and

8 answered.

9 A. No, I did not.

10 Q. So we're clear here, do you understand, going

11 back to Exhibit 26, page two, that there are

12 interview notes that exist of the interviews of the

13 77 people that are listed on page two of Exhibit 26?

14 A. As I said earlier, I understand that some

15 interview notes were prepared.

16 Q. Of the people who are listed on page two of

17 Exhibit 26; correct?

18 A. It's my understanding that some interview notes

19 were prepared during the course of interviewing some

20 of those 77 people, that's correct.

21 Q. And you haven't read those notes; correct?

22 A. As I replied earlier, I have not read those

23 notes.

24 Q. And counsel didn't read to you from any of those

25 notes; is that right?

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1 A. They did not.

2 Q. So you knew that there were notes out there of
3 these interviews that covered the subjects we were
4 going to be talking about here today, and you didn't
5 read them.

6 MR. SCHNEIDER: Object to the form.

7 A. I did not.

8 Q. Didn't you have a curiosity about what those
9 notes said?

10 A. It's --

11 My response to that is that I discussed with
12 outside counsel over an extended period of time in
13 order to prepare myself for this deposition. I did
14 not feel I needed to see individual notes or
15 understand the content of individual notes while
16 preparing for this.

17 MS. WIVELL: Move to strike the answer as
18 non-responsive.

19 Q. Sir, weren't you curious about what those notes
20 said?

21 A. No, I was not curious.

22 Q. Did you ask to see the notes?

23 MR. SCHNEIDER: Objection, asked and
24 answered, argumentative.

25 A. No, I did not.

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1 Q. Did you ask to have any portions of the notes
2 read to you?

3 MR. SCHNEIDER: Objection, asked and
4 answered, argumentative.

5 A. No, I did not.

6 Q. Sir, didn't you feel it was necessary to fully
7 prepare to do everything, as you said, to the extent
8 reasonably possible, that you read those notes before
9 coming here today to testify as B&W's spokesperson?

10 A. I did not believe it was necessary for me to
11 read interview notes to do what was reasonably
12 possible to prepare myself appropriately for this
13 deposition, no.

14 Q. Well, did you ask if the notes were available?

15 MR. SCHNEIDER: Objection, asked and
16 answered several times.

17 A. I do not recall asking whether the notes were
18 available.

19 Q. Sir, are the notes available?

20 A. It's my understanding that King & Spalding does
21 have some interview notes.

22 Q. Have any of the interview notes been destroyed,
23 sir?

24 A. I don't know.

25 Q. You knew you were coming here to talk about

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1 document destruction and transfer, you knew people
2 had been interviewed, you knew notes had been taken.
3 Did you ever inquire whether or not those notes or
4 any parts of those notes had been destroyed?

5 MR. SCHNEIDER: Objection to the form.

6 A. I did not feel it was necessary for me to make
7 that specific inquiry.

8 Q. Well, did you ask Brown -- I'm sorry. Did you
9 ask --

10 On behalf of Brown & Williamson, did you ask
11 outside counsel whether any of those notes had been
12 destroyed?

13 A. I did not.

14 Q. Would you do so and report back to us?

15 A. I'll do that.

16 Q. Thank you.

17 In preparation for your deposition today, did
18 any one of the folks that you talked to from King &
19 Spalding tell you any of the facts that were
20 contained in those interview notes?

21 MR. SCHNEIDER: Objection to the form.

22 A. Clearly, over the course of my preparation, I
23 did learn facts which were solicited in the course of
24 interviews with 77 people, so the answer is yes.

25 Q. Now let me get this clear. The four lawyers who

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1 conducted the interviews were named Duffy, Ireland,
2 Beckett, and someone else whose name you can't
3 remember; right?

4 A. I believe Iler is the name.

5 Q. Oh, I'm sorry. Is it Robyn Iler?

6 A. Right.

7 Q. Of those people who actually conducted the
8 interviews, did you speak to any of them about the
9 interviews?

10 MR. SCHNEIDER: Objection to the form.

11 A. I did speak to Robyn Iler, and Robyn Iler did
12 provide me some facts about the process that was
13 adopted by King & Spalding in conducting the
14 interviews.

15 Q. Okay. But I'm talking about facts from the
16 actual interviews themselves that Brown & Williamson
17 employees had given to these four King & Spalding
18 lawyers. Did you talk to any of those four King &
19 Spalding lawyers about the facts that they obtained
20 during that interview? Not the process by which the
21 interviews were conducted, but the facts they got
22 from the Brown & Williamson employees.

23 A. I can't recall whether I learned facts relating
24 to the -- the processes or the -- the items included
25 in the interrogatory response from Robyn Iler or from

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1 any of the -- or from where they came, I can't recall
2 from which outside counsel I may have learned facts.
3 I certainly learned facts in the process of preparing
4 for this deposition.

5 Q. Okay. Correct me if I'm wrong here because I
6 want to make sure I've got this right since I have
7 been accused in the past of misunderstanding things.

8 You didn't talk to the actual Brown & Williamson
9 employees who had facts about document destruction
10 and transfer; right? You didn't.

11 A. I did not do so in preparing for this
12 deposition.

13 Q. And in preparation for this deposition you
14 didn't talk to the actual lawyers who had interviewed
15 those people about the facts they obtained from those
16 Brown & Williamson employees; did you?

17 MR. SCHNEIDER: Objection.

18 A. My response is that I did learn facts that were
19 obtained during those interviews from outside
20 counsel. I cannot recall whether I learned those
21 facts from one of those four or from any of the other
22 outside counsel, but I certainly did learn facts --

23 Q. Okay.

24 A. -- obtained during the interview process.

25 Q. But correct me if I'm wrong here. I'm

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1 understanding you to say that Robyn Iler talked to
2 you about the process, but you really got the facts
3 about what happened in those interviews of Brown &
4 Williamson employees from a second set of Brown -- of
5 Brown & Williamson outside counsel who -- who didn't
6 even take part in the interviews.

7 MR. SCHNEIDER: Objection to the form.

8 Q. Is that right?

9 A. No, I would say that's not right. My response
10 is that I did learn facts which were solicited by
11 outside counsel in interviews from Brown & Williamson
12 people. I learned some of those facts from Robyn
13 Iler who directly participated in the interviews. I
14 learned other facts from other members of the outside
15 counsel team.

16 Q. And the other members of the outside counsel
17 team had never even talked to the 77 people listed in
18 the interrogatory answers; right?

19 A. No, I don't believe that's correct.

20 Q. Well let me clean up the question again.

21 So it would be fair to say that the people, Mr.
22 Schneider, Ms. Fox, Mr. Willoughby, those outside
23 lawyers had not participated in the interviews of the
24 77 people who are listed on page two of Exhibit 26;
25 isn't that right?

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1 MR. SCHNEIDER: Objection, misleading.

2 A. I cannot confirm that. I know that the main
3 work of conducting the interviews and preparing the
4 response for this -- of the interrogatory responses
5 conducted by the four King & Spalding individuals
6 that I named earlier, they were mainly involved in
7 this process.

8 Q. Okay. But you, in your preparation to be fully
9 informed for this deposition, you learned that four
10 people, Duffy, Robyn Iler, Thomas Beckett and someone
11 whose name you cannot remember, were the people who
12 were mainly responsible for those interviews; right?

13 A. That's correct.

14 Q. Okay. And in your thorough preparation for this
15 deposition you only talked to one of those people,
16 and according to your former test -- your former
17 testimony, you learned about the process from
18 Robyn -- what's her last --

19 A. I-l-e-r, Robyn Iler.

20 Q. -- Iler; is that right?

21 A. I believe so.

22 MR. SCHNEIDER: Objection to the form,
23 misleading.

24 Q. So then it would be fair to say that the
25 majority of the facts that you got about those 77

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1 depositions came from people who had not participated
2 in -- let me strike that.

3 So it would be fair to say that the majority of
4 facts you got about those 77 interviews came from
5 people who had not participated in those interviews;
6 isn't that right?

7 MR. SCHNEIDER: Objection, misleading.

8 A. Can -- can I ask you to back up one question?
9 My response when you said "is that right" was in
10 connection with the spelling or the name of Robyn
11 Iler. Can I just clarify that was the question that
12 you asked me?

13 Q. Go ahead.

14 A. Well if you could repeat the question --

15 Q. Oh.

16 A. -- and just let me understand what it was you
17 were asking me.

18 THE REPORTER: I can read it.

19 (Record read by the court reporter.)

20 A. My response to that is yes, I learned about the
21 process from Robyn Iler, but I also learned some
22 facts from her in relation to some of the items that
23 are included in the interrogatory response.

24 Q. How long did you talk to Robyn Iler?

25 A. She was present during my preparation for a day,

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1 I believe.

2 Q. And how long did you talk to her about the 77
3 interviews? Not the process, but the actual facts
4 that were obtained in the 77 interviews.

5 A. I would think for perhaps as much as an hour
6 during the course of the day.

7 Q. Did Ms. Iler tell you that notes had been taken
8 of these interviews?

9 A. I don't recall.

10 Q. Did she have notes there?

11 A. I don't believe she did.

12 Q. Did any of the lawyers who helped prepare you
13 for your deposition actually have notes present of
14 those 77 interviews?

15 A. I don't believe they did.

16 Q. So to the best of your recollection, they were
17 telling you about these facts contained in the 77
18 interviews based on their memory; is that right?

19 A. Based on their memory, based on the
20 interrogatory response, and -- and their recall, yes,
21 that's correct.

22 Q. Did anybody have any computer notes about those
23 interviews?

24 A. There were various documents that outside
25 counsel had with them, yes. Whether any of them were

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1 computer notes, I don't know.

2 Q. Were you shown any summaries of the interviews?

3 A. I don't believe I was.

4 Q. Were you read any summaries of the interviews?

5 A. I don't believe so.

6 Q. Just so we're clear here, at your deposition

7 preparation when you were talking about the

8 interviews of the 77 people whose names are listed on

9 page two of Exhibit 26, nobody had any written notes

10 of any kind concerning those interviews.

11 MR. SCHNEIDER: Objection to the form.

12 A. I cannot confirm that. I can tell you that I

13 did not see any and I do not believe that any were

14 read to me.

15 Q. And you felt that it was -- strike that.

16 And you felt that you were fully prepared to

17 testify about the facts contained in those 77

18 interviews based on just what the attorneys told you

19 from their recollection; right?

20 MR. SCHNEIDER: Object to the form,

21 misleading.

22 A. It's my understanding that I'm here today to

23 present company knowledge as contained in the

24 interrogatory response.

25 Q. And that interrogatory says, and I quote, "These

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1 responses are based on inquiries directed to the
2 following current and former B&W employees;" correct?

3 A. That's correct.

4 Q. And then it lists 77 people; right?

5 MR. SCHNEIDER: Objection to the form.

6 A. Yes, it does.

7 Q. And is it your preparation that you are here
8 today adequately prepared to testify about what those
9 77 people told the people from King & Spalding who
10 interviewed them based on the recollection of lawyers
11 who didn't even participate in their interviews? Is
12 that right?

13 MR. SCHNEIDER: Objection to the form.

14 A. I would say that I have prepared myself by
15 reviewing the process that outside counsel went
16 through, which included interviews with 77 people
17 whose names are listed in the interrogatory
18 response. I did not feel that it was necessary for
19 me to reperform any of those interviews, so I feel
20 that I've adequately prepared for the deposition
21 today.

22 MS. WIVELL: Sir, move to strike as
23 non-responsive.

24 Q. Is it your testimony today that you are
25 adequately prepared to testify about what the 77

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1 people told the lawyers from King & Spalding in those
2 interviews based on the recollection of what the
3 lawyers told you?

4 MR. SCHNEIDER: Objection to the form,
5 misleading.

6 A. It's my response that I'm here to talk about
7 what is contained in the interrogatory response and
8 the facts relating to what is contained in the
9 interrogatory response about Brown & Williamson's
10 position on retention of documents, and not to talk
11 to you about the facts that were provided in -- in
12 the interviews with these 77 people. But those facts
13 which are relevant and have been included in the --
14 in the interrogatory response are those facts that
15 I'm prepared to talk about today.

16 Q. Just so we're clear here, are you telling me
17 that you're only here to tell me what's in the
18 interrogatory answers and not to discuss the facts
19 that are the basis for those interrogatory answers?

20 MR. SCHNEIDER: Objection to the form.

21 A. No, I would not say that that's what I'm here
22 today --

23 I'm here today to discuss the interrogatory
24 response.

25 Q. So let me go back to my original question which

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1 never got answered. Is it your testimony that you
2 are adequately prepared to testify about what those
3 77 people know about document destruction and
4 transfer based on what King & Spalding's lawyers, who
5 didn't even participate in the interviews, told you?

6 MR. SCHNEIDER: Objection, asked and
7 answered, argumentative, misleading.

8 A. It's my --

9 MR. SCHNEIDER: Form.

10 A. It's -- it's my response that I'm not here --

11 I have not come here today to testify about all
12 the facts that 77 people have provided in the course
13 of preparing the interrogatory response. However,
14 some of those facts are relevant to the interrogatory
15 and have been included in the interrogatory response,
16 and I'm prepared to -- with knowledge of those facts
17 through preparation for this deposition to disclose
18 them.

19 Q. So the answer to my question is no, you're not
20 prepared to tell me all the facts these people,
21 people who are listed on page two of Exhibit 26,
22 have; isn't that true?

23 A. My response to that is that a number of those
24 facts are not relevant and I'm not prepared to -- to
25 talk to those.

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1 Q. But you haven't talked to any of these 77 people
2 about what they know yourself; have you, sir?

3 MR. SCHNEIDER: Objection, asked and
4 answered.

5 A. That's correct.

6 Q. And you haven't reviewed the notes in any way of
7 the interviews that were conducted of these 77
8 individuals.

9 A. I have not reviewed any interview notes, that's
10 correct.

11 Q. Just so we're clear here, everything you know
12 about the facts that these 77 people have about
13 document and transfer -- document destruction and
14 transfer you learned from King & Spalding's lawyers;
15 is that right?

16 A. Other than from King & Spalding's lawyers, I
17 learned some from in-house counsel, I learned some
18 from other outside counsel.

19 Q. Are there other outside counsel that we haven't
20 talked about here today that you learned things from?

21 A. Ernest Clements is an employee of one of the
22 local firms.

23 Q. And who is Ernest Clements?

24 A. Ernest Clements is a paralegal with Brown, Todd
25 & Heyburn.

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1 Q. And in fact he is Brown & Williamson's document
2 control project paralegal supervisor; isn't he?

3 A. Yes, he is.

4 Q. How long did you meet with Mr. Clements?

5 A. Perhaps for two hours or so.

6 Q. And what specifically did Mr. Clements tell you
7 in preparation for your deposition today?

8 A. The facts that Mr. Clements provided me were
9 relating to the special project that Brown &
10 Williamson undertook relative to pre-1988 documents
11 retained, and the efforts that I mentioned earlier in
12 late 1994 to bring our record-retention practices
13 into line with our policy.

14 Q. Anything else?

15 A. Not that I can recall.

16 Q. All right. Have we talked about everything that
17 you've done in preparation for your deposition today?

18 A. We've talked about everything I can recall.

19 Q. Well you're on the document control committee,
20 sir; aren't you?

21 A. I'm the audit member on the record -- record
22 management committee. Yes, I am.

23 Q. Have you reviewed the minutes of the record
24 management committee in preparation for your
25 deposition today?

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1 A. I have seen a minute of the records management
2 committee, yes.
3 Q. One minute; --
4 A. Yes.
5 Q. -- correct?
6 A. Yes, that's correct.
7 Q. And that is something that is attached as an
8 exhibit to the original interrogatories; correct?
9 A. That's correct.
10 Q. But apart from that you haven't reviewed the
11 minutes of your own committee; have you, sir?
12 A. It's my response that I have not. However, I
13 believe I've reviewed all the minutes of that
14 committee that have met in -- in recent years.
15 Q. Well not in preparation for your deposition
16 today; isn't that true?
17 A. That's correct.
18 Q. That's because you are a regular member of that
19 committee; aren't you?
20 A. I am an acting member of that committee, yes.
21 Q. And the minutes of the records management
22 committee are kept in the ordinary course of business
23 as business records of Brown & Williamson; correct?
24 A. The minutes are kept as a record of the business
25 that was discussed at each of its meetings, that's

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1 correct.

2 Q. And that is a document which is required to be
3 kept by Brown & Williamson's current
4 document-retention policy; isn't that true?

5 A. I don't know that it necessarily is.

6 Q. How long have you been a member of that
7 committee?

8 A. When I became audit director I was advised that
9 I would become a member of the committee, so that was
10 in December 1995.

11 Q. How long have you been a Brown & Williamson
12 employee?

13 A. I've been with Brown & Williamson since April
14 1993.

15 Q. Did you interview anyone in preparation for your
16 deposition today?

17 A. Yes. I spent time with outside counsel, as I've
18 described earlier.

19 Q. Did you interview them or did they educate you?

20 A. I would say that it was a combination of both.

21 Q. Well let me ask you this: Did you have anything
22 at all to do with the preparation of Exhibit 26 or
23 any of Brown & Williamson's answers which it
24 incorporates?

25 A. No, I did not.

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1 Q. So technically you had little, if any,
2 information personally about the subject matter of
3 today's deposition before you were chosen to be Brown
4 & Williamson's spokesperson; isn't that right?

5 MR. SCHNEIDER: Objection to the form,
6 misleading and misstates the record.

7 A. I would respond that that isn't correct. I, as
8 an audit manager in Brown & Williamson, did have some
9 personal knowledge about our record-retention
10 practices, and I have as a member of the -- the
11 records management committee some knowledge, and
12 through my -- in my capacity as director of audit I
13 have knowledge about the company's practices which
14 are relevant and have been included in the
15 interrogatory response.

16 Q. Sir, you --

17 You're not listed as one of the 77 people who
18 was even interviewed about this subject; were you?

19 A. That's correct.

20 Q. And you didn't take part in putting the
21 interrogatory answers together; right?

22 A. That's correct.

23 Q. You haven't even been an employee of Brown &
24 Williamson for most of the time that's the subject
25 of -- of this litigation; isn't that true?

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1 A. That's correct.

2 Q. And in fact you didn't become a member of the
3 records management committee until December of 1995;
4 right?

5 A. That's correct.

6 Q. Now apart from that, what knowledge did you have
7 about document retention or destruction personally?

8 A. I think Brown & Williamson has a policy related
9 to document retention of which I'm aware. I have
10 reviewed compliance with that policy within my
11 department. I also have knowledge through internal
12 audit activities of recordskeeping practices in the
13 company, and I also have knowledge through membership
14 of the records management committee.

15 Q. And that's all knowledge that you gained after
16 you became a Brown & Williamson employee in April of
17 1993; right?

18 A. That's correct.

19 Q. Did you take part in any way in the
20 investigation or interviews that were done in
21 preparation of Exhibit 26?

22 A. I did not.

23 Q. So basically would it be fair to say that your
24 personal knowledge about the subject that we're here
25 to discuss today that Brown & Williamson has

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1 appointed you as its spokesperson, your personal
2 knowledge before you were chosen to be Brown &
3 Williamson's personal knowledge was basically that of
4 an employee of the company who had read its current
5 document-destruction policy and information that you
6 obtained through your less than two years as a member
7 of the records management committee?

8 MR. SCHNEIDER: Object to the form.

9 A. That's correct. Supplemented by, you know, the
10 knowledge that I obtained during the course of my
11 duties as audit director, and indeed as an audit
12 manager in an earlier period, and as a department
13 manager.

14 Q. But all of that's information that's been
15 obtained since April 1993; right?

16 A. As I said earlier, that's correct.

17 MS. WIVELL: I'd like to take a break.

18 THE REPORTER: Off the record, please.

19 (Recess taken.)

20 (Plaintiffs' Exhibits 56 and 57

21 were marked for identification.)

22 BY MS. WIVELL:

23 Q. Sir, do you have before you Exhibit 56?

24 A. No, I do not.

25 Q. I'm sorry. Let me show you Exhibit 56. For the

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1 record, it's a letter dated March 17th, 1997 from
2 Richard Schneider to Gary Wilson and an attached
3 verification. Is that --

4 Have I correctly identified it, sir?

5 A. Yes, you have.

6 Q. All right. I'd like you to turn to the second
7 page of the exhibit and read it to yourself quickly,
8 please.

9 A. I've read it.

10 Q. Sir, this verification, which is the second page
11 of Exhibit 56, is signed by Susan Saunders on behalf
12 of Brown & Williamson; correct?

13 A. Yes, it is.

14 Q. She signed it as assistant secretary; correct?

15 A. It's my understanding that she is assistant
16 secretary, yes.

17 Q. And basically this verifies the interrogatory
18 answers which are Exhibit 26; correct?

19 MR. SCHNEIDER: Objection to the form. I
20 would note that Exhibit 26 does not have the -- its
21 exhibits attached.

22 MS. WIVELL: Well let me restate the
23 question then.

24 Q. Exhibit 26 doesn't have the exhibits attached,
25 but it comprises the body of the interrogatory

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1 answers that were filed by B&W February 11th, 1997;

2 correct?

3 A. Yes, it does.

4 Q. And this verification verifies on behalf of

5 Brown & Williamson those interrogatory answers;

6 right?

7 A. Yes, it does.

8 Q. Now Ms. Saunders states here that the

9 information contained in those interrogatories was

10 assembled by counsel based on information from

11 records, and present and former employees of Brown &

12 Williamson, and she goes on to state to the best of

13 her knowledge the information is correct. Do you see

14 that?

15 A. Yes, I do.

16 Q. All right. I would like to know what records

17 the interrogatory answers were based on.

18 A. It's my understanding that the interrogatory

19 responses were based on a review of records held by

20 Brown & Williamson which were obtained firstly by a

21 review of databases of records and then by review of

22 the documents themselves.

23 Q. What documents would those be?

24 A. Various documents which were reviewed by outside

25 counsel following their -- their inquiry into various

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1 databases that are held on documents collected over a
2 period of time in the course of litigation.

3 Q. When were these inquiries by outside counsel
4 conducted?

5 A. In the main, it's my understanding they were
6 conducted during January 1997, but they were begun a
7 considerable period of time before that.

8 Q. Who told you that?

9 A. Outside counsel.

10 Q. Which outside counsel?

11 A. Mr. Schneider.

12 Q. When did you understand that these inquiries
13 were begun?

14 A. I understand that they were begun from the
15 second half of 1996 forward.

16 Q. So no inquiries took place before the second
17 half of 1996; is that right?

18 A. I cannot confirm that.

19 Q. Well, do you know as Brown & Williamson's
20 spokesperson whether there were any inquiries that
21 were conducted before June of 1996?

22 A. I do not know that.

23 Q. But you --

24 It's your understanding based on what Mr.
25 Schneider has told you that the inquiries were

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1 essentially conducted -- begun in the second half of
2 1996, but in the main were conducted in January of
3 1997; is that right?

4 A. Yes.

5 Q. What inquiries do you understand took place
6 before the second half of 1996?

7 A. I have not prepared myself to establish the
8 exact timing of which inquiries were taken, so I
9 don't know exactly which ones were -- were undertaken
10 earlier.

11 Q. But do you know of any that were undertaken
12 before the second half of 1996?

13 A. No, I do not.

14 Q. So in your preparation so that you could come
15 here and fully answer our questions, you didn't learn
16 of a single inquiry that was made before the second
17 half of 1996; did you, sir?

18 MR. SCHNEIDER: Objection to the form.

19 A. I did not.

20 Q. You would have expected, wouldn't you, that if
21 inquiries had been made before June of 1996, you
22 would have been told about them in your preparation
23 for this deposition; correct?

24 A. I would not necessarily expect to have been told
25 about those inquiries, no.

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1 Q. Well as a matter of fact, they went over flip
2 charts with you about the inquiry process; didn't
3 they?

4 A. The -- the facts that they shared with me
5 regarding the inquiry process, I mean they -- they --
6 they told me about the process, they did not tell me
7 specifics as to the exact time of which inquiries
8 were made, and nor would I have expected them to.

9 Q. You didn't ask that question then, eh?

10 A. I did not.

11 Q. But nothing you learned suggested that inquiries
12 had been made on the topic of document destruction or
13 transfer prior to the beginning of June of 1996.

14 A. That's correct.

15 Q. So to the best of your knowledge as the
16 spokesperson fully prepared to testify here today for
17 Brown & Williamson, the inquiries began in the second
18 half of 1996; right?

19 MR. SCHNEIDER: Objection to the form.

20 A. That's my understanding.

21 Q. Now did the inquiries of present and former
22 employees that are referred to by Ms. Saunders in her
23 verification also occur in -- beginning in the second
24 half of 1996?

25 A. That's my understanding, yes.

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1 Q. And you know of no inquiries before that time
2 which were made of present or former employees of
3 Brown & Williamson.

4 A. I cannot say that none were done, but I do not
5 know of any.

6 Q. None were mentioned to you in your preparation
7 for this deposition today; were there?

8 A. There may have been, but I was not told about
9 the timing of any of those particular inquiries.

10 Q. But you understand that in the main the
11 interviews of present and former employees of Brown &
12 Williamson were done in January of 1997; is that
13 right?

14 A. I believe that's correct.

15 Q. Sir, I have had the court reporter mark as
16 Exhibit 57 the July 19th, 1995 interrogatory
17 responses of defendant Brown & Williamson which are
18 entitled "DEFENDANT BROWN & WILLIAMSON TOBACCO
19 CORPORATION RESPONSES AND OBJECTIONS TO PLAINTIFFS'
20 FIRST SET OF INTERROGATORIES." Have I identified
21 that correctly, sir?

22 MR. SCHNEIDER: Objection to the form.
23 This appears to be a portion of the document.

24 MS. WIVELL: Fair enough.

25 Q. It is a portion of the document; isn't that

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1 right?

2 A. Yes, it does seem to be that.

3 Q. And this portion includes plaintiffs'

4 Interrogatory No. 9 and Brown & Williamson's response
5 to plaintiffs' Interrogatory No. 9; correct?

6 A. Yes, it does.

7 Q. Now you read this interrogatory and response in
8 preparation for your deposition today; didn't you,
9 sir?

10 MR. SCHNEIDER: Objection to the form. And
11 I would advise you that this subject is not within
12 the scope of the February 11, 1997 deposition.
13 However, we will allow Mr. Lowther to answer
14 questions on the topic to the extent he's able to do
15 so.

16 THE WITNESS: Could you repeat your
17 question, please?

18 MS. WIVELL: Just a moment.

19 BY MS. WIVELL:

20 Q. Sir, I'm going to respond to Mr. Schneider's
21 assertion by asking you to look at Exhibit 26, and
22 would you please read the first line of Brown &
23 Williamson's supplemental responses to certain of
24 plaintiffs' interrogatories to Brown & Williamson
25 Corporation -- Tobacco Corporation filed February

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1 11th, 1997.

2 A. "Incorporating verbatim its previous responses,
3 as well as its general and specific...."

4 Q. Sir, Exhibit 57 is a previous response which is
5 incorporated by reference by the first line of
6 Exhibit 26; isn't that true?

7 MR. SCHNEIDER: Objection to the form,
8 misleading. This response relates to certain
9 interrogatories included in Exhibit 26.

10 A. Yes, it is.

11 Q. Now sir, I'm going to try and re-ask that
12 question that we didn't get answered here before.
13 You've read this interrogatory and response in
14 preparation for your deposition today; isn't that
15 true?

16 A. I believe I have.

17 Q. Now Interrogatory No. 9 asks defendant Brown &
18 Williamson to describe with specificity each instance
19 in which documents relating to smoking and health
20 were transferred from your company to a corporate
21 affiliate or to a third party for any reason,
22 including but not limited to storage, warehousing,
23 indexing, or destruction, and state the name of the
24 entities transferring and receiving the documents,
25 the location of the documents prior to and subsequent

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1 to the transfer, the date of the transfer, a
2 description of the documents transferred, the volume
3 of documents transferred, and the present location of
4 the documents; correct?

5 A. That's what it says.

6 Q. All right. Now it asks for each instance;
7 correct?

8 A. Yes, it does.

9 Q. All right. Do you see the word "set" used
10 anyplace in this interrogatory?

11 A. No, I do not.

12 Q. I'd like to refer you to Brown & Williamson's
13 response. It says, "Brown & Williamson states that,
14 to the best of its present knowledge, and without
15 interrogating all of its employees and without
16 reviewing all documents in its possession (which
17 would be unduly burdensome), Brown & Williamson has
18 not yet identified a set of documents that it at one
19 time retained and stored in its possession and later
20 transferred its only copy to a corporate affiliate
21 for the purposes of storage, warehousing, indexing,
22 destruction or change of custody." Have I read it
23 correctly so far?

24 A. Yes, you have.

25 Q. Then the answer goes on; does it not?

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1 A. Yes, it does.

2 Q. All right. Well let me ask you what
3 information -- I'm sorry, strike that.

4 Let me ask you what inquiry Brown & Williamson
5 had made as of July 19th, 1995 to answer that
6 interrogatory.

7 MR. SCHNEIDER: Object to the form,
8 misleading, outside the scope.

9 A. My response is as stated in the interrogatory.
10 Brown & Williamson states that it had not
11 interrogated all of its employees and had not
12 reviewed all documents in its possession as of the
13 time, yet it had been unable to identify a set of
14 documents retained and stored and later transferred
15 to an affiliate.

16 Q. Well sir, you told us just a bit ago that the
17 inquiry into documents and information contained --
18 known by present and former employees was conducted
19 in the beginning half of 1996, but in the main in
20 January of 1997; is that right?

21 MR. SCHNEIDER: Objection to the form,
22 misleading in the extreme.

23 A. It's --

24 My response to that is that it's my
25 understanding that there was some backwards and

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1 forwards between plaintiffs and Brown & Williamson
2 while working out what was appropriate to provide in
3 a response to this interrogatory, --

4 MS. WIVELL: Move to strike as non --

5 A. -- and that --

6 Q. I'm sorry.

7 A. -- and that some of those inquiries clearly
8 would have been done at an earlier time than 1996,
9 mid-1996 forward. However, it is my understanding
10 that from mid-1996 forward, efforts were made once
11 certain agreements had been reached on what it was
12 that plaintiffs were seeking, and that the
13 substantial effort associated with pulling together
14 the interrogatory response was done in January, as I
15 said earlier.

16 MS. WIVELL: Move to strike as
17 non-responsive.

18 Q. Sir, my question is: You told us just a bit ago
19 that the inquiry into documents and information known
20 by present and former employees was conducted in the
21 beginning half of 1996, but in the main in January of
22 1997; isn't that right?

23 MR. SCHNEIDER: Objection, misleading. Ms.
24 Wivell --

25 MS. WIVELL: I object, Mr. Schneider.

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1 You've said enough. I don't want you coaching this
2 witness.

3 MR. SCHNEIDER: I'm not going to have a
4 record that's created that's misleading. You've
5 asked Mr. --

6 MS. WIVELL: I object to your speaking
7 objections. You're violating a court order, Mr.
8 Schneider.

9 MR. SCHNEIDER: I'm -- I'm trying to make
10 sure that we have a correct record, Ms. Wivell, and
11 I'm trying to make sure that we don't have a confused
12 record. I believe I'm entitled to advise you that
13 you are asking --

14 MS. WIVELL: I don't need your education,
15 sir, I need an answer to the question. And we'll
16 call the court if I have to.

17 MR. SCHNEIDER: I wish you would not
18 interrupt me. I wish you would let me make my
19 statement.

20 MS. WIVELL: I don't need your instruction,
21 Mr. Schneider. I need an answer to the question and
22 I want it now.

23 MR. SCHNEIDER: Objection to the form of
24 the question.

25 MS. WIVELL: Thank you, sir.

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1 MR. SCHNEIDER: It's misleading.

2 MS. WIVELL: That's all I need.

3 MR. SCHNEIDER: It's outside the scope of
4 this deposition.

5 BY MS. WIVELL:

6 Q. My question is, --

7 MR. SCHNEIDER: Misstates the record.

8 Q. -- sir: You told us just a bit ago that the
9 inquiry into documents and information contained --
10 I'm sorry, let me strike that.

11 You told us just a bit ago that the inquiry into
12 documents and information known by present and former
13 employees was conducted in the beginning half of
14 1996, but in the main in January of 1997; isn't that
15 right, sir?

16 A. No, it is not.

17 Q. Oh, I'm sorry. Would you please explain when
18 the inquiry that I was talking about before
19 occurred?

20 MR. SCHNEIDER: Objection to the form.

21 A. Could you please clarify for me the inquiry you
22 were talking about before?

23 Q. Well sir, I'm inquiring about information about
24 document destruction and transfer which plaintiffs
25 have been trying to get a straight answer to since

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1 1995, and I'm trying to find out when Brown &
2 Williamson undertook to investigate to find out the
3 answer to those questions.

4 MR. SCHNEIDER: Objection to the form,
5 misleading, argumentative.

6 A. It's my understanding that Brown & Williamson
7 has undertaken a good-faith effort to respond to
8 interrogatories and that, as I said earlier, there's
9 been some toing and froing as to the exact nature of
10 what was required in the interrogatories, and that
11 once that was clearly defined by the court, a good
12 effort was made which I believe started in the second
13 half of 1996 and was conducted in the main in January
14 of 1997.

15 MS. WIVELL: Move to strike as
16 non-responsive.

17 Q. I'm inquiring about information about document
18 destruction and transfer here, sir. I'm trying to
19 find out when Brown & Williamson undertook to
20 investigate to find out the answer to this question:
21 When did it try and answer Interrogatory No. 9? When
22 did it conduct an investigation to do so?

23 MR. SCHNEIDER: Objection to the form,
24 outside the scope.

25 You can answer.

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1 A. Based on this response, Brown & Williamson
2 conducted some inquiries in response to that
3 interrogatory and returned them in July 1995.

4 Q. What inquiry did Brown & Williamson conduct
5 prior to its July 19th, 1995 response?

6 MR. SCHNEIDER: Same objection.

7 A. Based on what is included in this response, it's
8 evident that Brown & Williamson reviewed a certain
9 document that you referred to earlier as a
10 deadwood -- a deadwood document, and that is
11 indicated in here, and there undoubtedly were other
12 inquiries made at the time.

13 Q. Sir, you don't know of any single inquiry, apart
14 from discussion about the deadwood memo, that was
15 made at the time or before this interrogatory was
16 answered; correct?

17 MR. SCHNEIDER: Objection.

18 A. My response is that I have not prepared myself
19 today to respond on individual inquiries that have
20 been made. I've prepared myself to respond on what
21 is contained in the interrogatory response of Brown &
22 Williamson.

23 Q. And this is an interrogatory response of Brown &
24 Williamson; isn't it, sir?

25 MR. SCHNEIDER: Objection to the form,

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1 misleading, misstates his testimony.

2 MS. WIVELL: I'm sorry. Are you saying
3 that it's not an interrogatory response of Brown &
4 Williamson, Mr. Schneider?

5 MR. SCHNEIDER: He didn't say "a," he said
6 "the." And this interrogatory -- this deposition is
7 about the February 11th, 1997 response, not about the
8 July 1995 response.

9 MS. WIVELL: Which begins by saying, and I
10 quote, "Incorporating verbatim its previous
11 responses...", " sir.

12 MR. SCHNEIDER: To the interrogatory
13 described in Exhibit 26, which is the document-
14 destruction interrogatory, not other interrogatories,
15 Ms. Wivell.

16 BY MS. WIVELL:

17 Q. Sir, are you personally aware of one single
18 thing, besides talking about the deadwood memo, that
19 Brown & Williamson did to respond to the
20 Interrogatory No. 9 which is in Exhibit 57?

21 A. I do not have personal knowledge of what was
22 done. I can respond that I believe that certain
23 inquiries would have been undertaken in preparing
24 this response.

25 Q. And what do you base your personal belief on,

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1 sir?

2 A. Well I'm basing it on the response to this
3 interrogatory.

4 Q. Does this response to the interrogatory make any
5 reference to any investigation at all apart from
6 discussion of the deadwood memo?

7 A. No, it does not.

8 Q. So as you sit here today as Brown & Williamson's
9 spokesperson, you cannot point to one single thing
10 that was done before July of 1995 to investigate on
11 behalf of Brown & Williamson what happened to answer
12 Interrogatory No. 9.

13 MR. SCHNEIDER: Objection to the form,
14 scope.

15 A. I cannot.

16 Q. And no one has told you of anything that was
17 done to make an investigation in order to answer
18 Interrogatory No. 9; correct?

19 A. I'm not sure that that is correct. I have been
20 advised of the circumstances surrounding the deadwood
21 memorandum, and I cannot say that I have not been
22 advised about some of the inquiries that may have
23 been undertaken in preparing this response.

24 Q. All right. But when did you do your
25 investigation about the deadwood memo, sir?

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1 A. During the course of the 40 hours' preparation I
2 made for this deposition.

3 Q. And when did that 40 hours of preparation occur?

4 A. Well some of it started in -- in April, early in
5 April, a day or so towards the end of April, and the
6 beginning of this week.

7 Q. Of 1997; right?

8 A. That's correct.

9 Q. Would you take a moment and review to yourself
10 Brown & Williamson's entire response to Interrogatory
11 No. 9.

12 A. I have read it.

13 Q. Sir, does Brown & Williamson give any
14 information here about a -- any single instance where
15 any of its documents or documents in its possession
16 were transferred?

17 MR. SCHNEIDER: Objection to the form.

18 A. Could you re -- restate the question?

19 Q. I'll restate the question.

20 In this answer, does Brown & Williamson report
21 even one instance where a document or documents which
22 it had was transferred?

23 A. No, it does not.

24 MR. SCHNEIDER: Objection to the form.

25 Q. I'm sorry, your answer was --

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1 A. No, it does not.

2 (Plaintiffs' Exhibit 58 was marked
3 for identification.)

4 BY MS. WIVELL:

5 Q. Sir, showing you what's been marked as
6 Plaintiffs' Exhibit 58, it is a portion of Brown &
7 Williamson Tobacco Corporation's merits discovery
8 responses to plaintiffs' jurisdictional
9 interrogatories and requests for production; correct?

10 A. It's so headed, yes.

11 Q. All right. Would you take a moment to review
12 Interrogatory No. 6 and the answer.

13 MS. WIVELL: And we can go off the record.

14 MR. SCHNEIDER: We can stay on the record
15 while the witness is reviewing the exhibit.

16 MS. WIVELL: No. We're going to go off the
17 record because that's what your lawyers have been
18 doing in the states' depositions, so that's what
19 we'll do here. Off the record.

20 MR. SCHNEIDER: I object. I've not been at
21 the state's depositions. Has anybody else been
22 present who can refer --

23 Have you been present at those depositions?

24 MS. WIVELL: No. I've read them, so I know
25 what's going on.

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1 MR. SCHNEIDER: Has anybody been present at
2 the depositions? Has that been the protocol?

3 (No response.)

4 MR. SCHNEIDER: We went over this last
5 time. We object to going off the record to review
6 exhibits.

7 MS. WIVELL: Fine, you can object. Off the
8 record.

9 THE REPORTER: Off the record, please.

10 MR. SCHNEIDER: We're not off the record.
11 I have not agreed to go off the record, please.

12 THE REPORTER: Stay on the record.

13 MS. WIVELL: Well Mr. Schneider, you're the
14 people who were wanting bilaterality, and since you
15 have insisted on this with us, I'm going to insist we
16 go off the record.

17 MR. SCHNEIDER: Well --

18 MS. WIVELL: Would you like to call the
19 court about it?

20 MR. SCHNEIDER: I would not like to call
21 the court about it.

22 MS. WIVELL: I didn't think so.

23 MR. SCHNEIDER: I don't like to bother the
24 court needlessly. But I'll tell you what, if you're
25 telling me in the depositions defendants have taken

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1 this position with the state, I accept your word on
2 that and we'll abide by that protocol.

3 MS. WIVELL: Mr. Schneider, I will tell you
4 that that not only happened, but counsel for the
5 defendants have gone off the record between questions
6 in order to save time. So, yes, that has happened.

7 MR. SCHNEIDER: All right. Without
8 agreeing to whatever happened in the past, I'll agree
9 to go off the record on the basis of Ms. Wivell's
10 stipulation with me.

11 THE REPORTER: Off the record, please.

12 (Discussion off the record.)

13 BY MS. WIVELL:

14 Q. Sir, while we were off the record you had the
15 opportunity to review the Interrogatory No. 6 and
16 Brown & Williamson's response which are contained in
17 Exhibit 58; correct?

18 A. Yes, I did.

19 Q. Sir, Interrogatory No. 6 asks Brown & Williamson
20 to, quote, "Describe with specificity each instance
21 in which documents relating to smoking and health
22 were transferred from BAT Group or one member of the
23 BAT Group to another member of BAT Group or to BAT
24 Group or to a third party for any reason, including
25 but not limited to storage, warehousing, indexing or

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1 destruction, and state the name of the entities
2 transferring and receiving the documents, the
3 location of the documents prior to and subsequent to
4 the transfer, the date of the transfer, a description
5 of the documents transferred, the volume of documents
6 transferred, and the present location of the
7 documents;" correct?

8 A. Yes, it does.

9 Q. Now is the word "set" used in this interrogatory
10 at all?

11 MR. SCHNEIDER: Object to the form.

12 A. No, it's not.

13 Q. Now it asks for Brown & Williamson to
14 specifically describe each instance in which
15 documents relating to smoking and health were
16 transferred; right?

17 A. Yes, it does.

18 Q. Now you've reviewed Brown & Williamson's
19 response; right?

20 A. Yes, I have.

21 Q. Now Brown & Williamson does not give us any
22 evidence of any such transfer in its interrogatory
23 answer; does it?

24 MR. SCHNEIDER: Objection to the form.

25 A. It does not, but Brown & Williamson says that it

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1 is not aware of any transfer and it would be unduly
2 burdensome to try to identify each and every specific
3 example.

4 Q. Okay. Well what had Brown & Williamson done up
5 to the date of these interrogatories, September 22nd,
6 1995, to try and find out the answer to this
7 interrogatory?

8 MR. SCHNEIDER: Objection, scope.

9 A. I have not prepared myself to answer that
10 question. I can indicate that it is my understanding
11 that some reviews have been undertaken in response to
12 this, and the response is incorporated in this
13 document.

14 Q. Well where does it say what was done? Please
15 point out those words to me.

16 MR. SCHNEIDER: Objection.

17 A. It does not indicate what inquiries were
18 undertaken.

19 Q. And sir, you personally have no knowledge that
20 any inquiry had been undertaken by the time this
21 interrogatory answer was filed; do you, sir?

22 A. I do not have any personal knowledge of that.

23 Q. Well you, as Brown & Williamson's spokesperson
24 here today, don't have any knowledge of any inquiries
25 that were undertaken by the time this interrogatory

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1 was answered on September 22nd, 1995; do you, sir?

2 MR. SCHNEIDER: Object to the form, scope.

3 A. I've not prepared myself for that question.

4 Q. Well sir, this interrogatory asks about document
5 destruction; doesn't it?

6 MR. SCHNEIDER: Objection to the form,
7 scope, misleading.

8 A. It's my understanding that it's asking about
9 transferring of documents.

10 Q. Well in the interrogatory it says "including but
11 not limited to storage, warehousing, indexing or
12 destruction;" doesn't it, sir?

13 A. It's my understanding that that is a reference
14 as to the reason for the transfer.

15 Q. That's right. And it talks about whether
16 documents were transferred for purposes of
17 destruction; correct?

18 A. That's correct.

19 Q. And Brown & Williamson listed no such transfers
20 for the purpose of document destruction; isn't that
21 true?

22 A. That's correct.

23 Q. Now Brown & Williamson said "to the best of its
24 present knowledge and without interrogating all of
25 its employees." How many employees had been

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1 interrogated by that time?

2 MR. SCHNEIDER: Objection to the form,
3 scope.

4 A. I've not prepared myself to answer that
5 question.

6 Q. Sir, no employees had been interviewed on this
7 subject by the time this interrogatory was answered;
8 isn't that true?

9 MR. SCHNEIDER: Same objection.

10 A. I've not prepared myself to answer that
11 question. I do not know.

12 Q. So you're telling me that Brown & Williamson
13 answered an interrogatory and hadn't interrogated
14 anyone; is that right?

15 MR. SCHNEIDER: Objection, misleading,
16 scope.

17 A. No, no, that's not my testimony.

18 Q. Oh. Who had they interrogated in -- in
19 preparing this interrogatory answer?

20 A. I do not know.

21 Q. So as you sit here today, you cannot testify
22 that for a fact even one person was interrogated
23 about this question at the time this interrogatory
24 was signed and sent to the plaintiffs; isn't that
25 true?

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1 A. That's correct.

2 Q. Now it goes on to say here Brown & Williamson
3 has not identified a set of documents; doesn't it?

4 A. That's correct.

5 Q. And in fact that same language was used in
6 Exhibit 57; wasn't it, in the answer?

7 A. Yes, it was.

8 Q. Now this --

9 Neither of these interrogatories in Exhibit 57
10 or 58 ask for a set of documents; do they?

11 MR. SCHNEIDER: Object to the form.

12 A. They do not.

13 Q. They ask for each instance when -- in which any
14 documents were transferred; right?

15 A. Yes, they do.

16 Q. Isn't it a fact that documents were transferred
17 by B&W for destruction?

18 MR. SCHNEIDER: Object to the form.

19 A. It is my understanding that from time to time
20 Brown & Williamson has transferred sets of documents
21 to third parties for purposes of disposal in the
22 ordinary course of business, yes.

23 Q. Well I'm not talking about the ordinary course
24 of business, sir.

25 Isn't it a fact that documents relating to

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1 smoking and health have been transferred, not in the
2 ordinary course of business by Brown & Williamson,
3 for the purpose of destroying those documents?

4 MR. SCHNEIDER: Object to the form.

5 A. It is not my understanding that that has ever
6 been the case, and it is in fact indicated that that
7 is not the case in the interrogatory response that
8 I've prepared to come and talk about today.

9 Q. So if I can show you examples of documents which
10 were transferred for destruction, that would mean
11 that Brown & Williamson's interrogatory answers were
12 false; isn't that true?

13 MR. SCHNEIDER: Objection to the form.

14 A. It's my understanding that Brown & Williamson
15 has no knowledge of any transfer of a set of
16 documents for purposes of destruction, other than as
17 I mentioned earlier, in the ordinary course of
18 business to a third third party for disposal.

19 Q. Sir, I didn't ask for a set of documents. I
20 asked about whether, if I could show you instances
21 where individual documents were deliberately
22 transferred so that they could be destroyed, that
23 would mean that Brown & Williamson's interrogatory
24 answers were false; isn't that true?

25 MR. SCHNEIDER: Objection to the form,

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1 misleading.

2 A. My response is that in the interrogatory
3 response reference is made, I believe, to
4 circumstances where documents have been transferred
5 for disposal by third parties in the ordinary course
6 of business. Brown & Williamson is not aware of any
7 other circumstance where documents have been
8 transferred for destruction or disposal in any other
9 way.

10 Q. Well how about in-house. Has Brown & Williamson
11 deliberately destroyed files relating to smoking and
12 health that are not listed in interrogatory -- in the
13 interrogatory answers that were filed February 11th,
14 1997?

15 A. Brown & Williamson has for many years had a
16 policy of retaining documents which are required to
17 be held for legal, audit or tax purposes and has
18 diligently carried out that policy over many years.
19 We have produced large numbers of those documents in
20 this case. We have made a large number of diligent
21 inquiries as required by the court order to
22 investigate circumstances where documents may have
23 been destroyed and have not come across any examples
24 of that, as indicated in the interrogatory response.

25 MS. WIVELL: Move to strike as

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1 non-responsive.

2 Q. Isn't it true that Brown & Williamson has
3 deliberately destroyed files including
4 smoking-and-health-related documents that are not
5 listed in the interrogatory, Exhibit 26, which was
6 filed February 11th, 1997?

7 MR. SCHNEIDER: Objection to the form.

8 A. I don't believe it is true.

9 (Plaintiffs' Exhibit 59 was marked
10 for identification.)

11 BY MS. WIVELL:

12 Q. Sir, showing you what's been marked as
13 Plaintiffs' Exhibit 59, these are supplemental
14 responses to jurisdictional Interrogatory No. 6 and
15 merits Interrogatory No. 9 filed by Brown &
16 Williamson Tobacco Corporation; correct?

17 MR. SCHNEIDER: Marti, can I get a copy?

18 MS. WIVELL: Oh, I'm sorry. Yeah.

19 (Document handed to Mr. Schneider.)

20 THE WITNESS: I'm sorry. Could you repeat
21 your question?

22 MS. WIVELL: Certainly.

23 Q. Showing you what's been marked as Plaintiffs'
24 Exhibit 59, these are supplemental responses to
25 jurisdictional Interrogatory No. 6 and merits

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1 Interrogatory No. 9 filed by Brown & Williamson

2 Tobacco Corporation; correct?

3 A. That's correct.

4 Q. And if you'd turn to page two, there is

5 jurisdictional Interrogatory No. 6 that plaintiffs

6 asked of Brown & Williamson; correct?

7 A. Yes.

8 Q. And that is the same Interrogatory No. 6 which

9 is part of Exhibit 58; correct?

10 A. Yes.

11 Q. Would you take a few moments -- we'll go off the

12 record. You can read Brown & Williamson's response

13 to Interrogatory No. 9.

14 THE REPORTER: Off the record, please.

15 (Discussion off the record.)

16 BY MS. WIVELL:

17 Q. In addition to plaintiffs' Interrogatory No. 6

18 concerning jurisdiction, there is also repeated

19 Interrogatory No. 9 from the plaintiffs; correct?

20 A. That's correct.

21 Q. And Interrogatory No. 9 is the very same

22 interrogatory that was listed in Exhibit 57; correct?

23 A. I believe so.

24 Q. Now Brown & Williamson states in its answer to

25 these two interrogatories --

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1 By the way, both of those interrogatories asked
2 for information about document transfer and
3 destruction; correct?

4 MR. SCHNEIDER: Objection to the form.

5 A. It's my understanding that number nine asks for
6 documents which were transferred for any reason, so
7 it's relating to transfer of documents.

8 Q. But it also says "for any reason, including but
9 not limited to storage, warehousing, indexing or
10 destruction;" correct?

11 MR. SCHNEIDER: Object to the form.

12 A. Yes, it does say that.

13 Q. And Brown & Williamson understood that
14 plaintiffs were inquiring about the transfer of
15 documents for the purposes of storage, warehousing,
16 indexing or destruction; right?

17 A. Yes.

18 Q. Now does B&W in its response list any example of
19 any document that was transferred for any of those
20 purposes?

21 A. No, it does not.

22 Q. Now it does say that it's agreed to search for
23 and produce or log certain documents; correct?

24 A. Yes, it does.

25 Q. And you are unaware of any search that Brown &

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1 Williamson conducted for responsive documents to
2 these requests that was done before this
3 interrogatory was filed; are you?

4 MR. SCHNEIDER: Objection, scope.

5 A. I have not prepared myself to answer that
6 question.

7 Q. Sir, you do not know of any search that was done
8 before these interrogatory answers were filed; do
9 you?

10 MR. SCHNEIDER: Same objection.

11 A. I do not.

12 Q. And as Brown & Williamson's spokesperson, while
13 you were trying to fully inform yourself about this
14 deposition, you didn't hear about any search that was
15 done before these interrogatories that are Exhibit 59
16 were done.

17 A. I cannot -- I cannot confirm that. I may have
18 indeed heard of such an inquiry.

19 Q. But you just can't point me to any information
20 about such an inquiry as we sit here today.

21 A. As I said earlier, I cannot -- I was not
22 appraised of the timing of different inquiries that
23 were made in preparing the interrogatory response for
24 Brown & Williamson, other than in general terms, a
25 large number of different inquiries were made.

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1 Q. But you know of no specific inquiry that was
2 made prior to these interrogatory answers being
3 filed; correct?

4 A. That's correct.

5 Q. Now again it says B&W has not identified any set
6 of documents relating to smoking and health which B&W
7 at one time retained and stored in its possession and
8 later gave its only copy to a corporate affiliate for
9 purposes of storage, warehousing, indexing,
10 destruction, corporate reorganization of sale -- or
11 sale of assets; right?

12 A. That's correct.

13 Q. Now neither of these interrogatories ask for a
14 set of documents; do they?

15 MR. SCHNEIDER: Object to the form.

16 A. That's correct.

17 Q. They ask for each instance. That would include
18 one single document; wouldn't it?

19 A. That's correct.

20 Q. Would include a group of files too; wouldn't it?

21 A. Yes, it would.

22 Q. How does B&W define "set," since it used that
23 word in these interrogatory answers?

24 A. It's my understanding that in responding to this
25 interrogatory, Brown & Williamson believed that it

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1 would be unduly burdensome to investigate each and
2 every single document that may have been transferred
3 over many, many years for any reason to an affiliate
4 or to a third party, but that it conducted inquiries
5 to try and identify, as agreed or as laid out in the
6 court order, examples where such a transfer may have
7 occurred, and that it did so on the basis of trying
8 to identify circumstances where collections of
9 documents as opposed to single documents were
10 transferred or destroyed.

11 Q. So are you saying that "set" refers to
12 collections of documents and to not single documents?

13 A. I believe that's correct, yes.

14 Q. So are you telling me that prior to the
15 interrogatory answers which have been marked as
16 Exhibit 59, that Brown & Williamson had only looked
17 for collections of documents and not to each instance
18 where a document might have been transferred for
19 destruction?

20 MR. SCHNEIDER: Objection to the form,
21 scope.

22 A. As mentioned in the response, Brown &
23 Williamson, because of the burden and the breadth
24 of -- of the -- of the interrogatory request, did not
25 look for transfers of individual documents, but

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1 looked for examples where sets of documents had been
2 transferred.

3 Q. Okay. Well I'd like an answer to the
4 interrogatory, and speaking on behalf of B&W, can you
5 describe any instances of documents where a single
6 document was transferred relating to smoking and
7 health by B&W to a corporate affiliate or to a third
8 party for any reason, including but not limited to
9 storage, warehousing, indexing or destruction?

10 MR. SCHNEIDER: Objection to the form,
11 outside the scope, outside the scope of the agreement
12 between plaintiffs and Brown & Williamson.

13 A. It's not my understanding that Brown &
14 Williamson had a requirement to report on every
15 specific document that may have been transferred;
16 that agreement was reached that Brown & Williamson
17 would conduct due-diligence inquiries to ascertain
18 whether sets of documents had been transferred
19 relating to smoking and health.

20 Q. So individual documents may have been destroyed
21 by Brown & Williamson. Is that your testimony?

22 MR. SCHNEIDER: Objection.

23 A. It's my testimony that Brown & Williamson has in
24 the ordinary course of business destroyed documents,
25 as any other business does, over many years.

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1 Q. Sir, isn't it a fact --

2 A. But -- but it has a policy which it has had in
3 place for -- for many years of retaining documents
4 which are required for litigation purposes, and Brown
5 & Williamson has been very diligent in maintaining
6 that policy and keeping documents which may be
7 required for litigation.

8 Q. Well let me ask it this way: We have three
9 different sets of interrogatories marked Exhibits 57,
10 58 and 59 that ask for each instance in which
11 documents relating to smoking and health were
12 transferred; correct?

13 A. That's correct.

14 Q. And are you telling me that the entire time that
15 these interrogatories were outstanding, that Brown &
16 Williamson did nothing to determine whether single
17 documents were destroyed, not in the ordinary course
18 of business, which related to smoking and health?

19 MR. SCHNEIDER: Object to the form.

20 A. Could you just repeat that question, please?

21 Q. Certainly.

22 Are you telling me that the entire time that
23 these interrogatories were outstanding, that Brown &
24 Williamson did nothing to determine whether single
25 documents were destroyed which related to smoking and

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1 health and were destroyed not in the ordinary course
2 of business?

3 A. No, I don't believe I told you that.

4 Q. Well I'm asking if that's true.

5 A. I don't know that that's true.

6 Q. So Brown & Williamson did nothing to determine
7 each instance in which documents relating to smoking
8 and health were transferred as requested by these
9 interrogatories; is that right?

10 MR. SCHNEIDER: Object to the form.

11 A. It's my response that Brown & Williamson
12 objected to the breadth and burden of those
13 interrogatories, and agreement was reached that Brown
14 & Williamson would undertake a due diligence review
15 for the transfer of documents for destruction, which
16 you've been asking me about, on the basis of sets of
17 documents being transferred. It is not my testimony
18 that Brown & Williamson did not investigate
19 individual circumstances in the course of those
20 investigations where a single document may have been
21 destroyed.

22 Q. All right. Tell me what you know about Brown &
23 Williamson's investigation of individual
24 circumstances where single documents have been
25 destroyed.

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1 MR. SCHNEIDER: Objection to the form.

2 A. I can refer you to one specific instance
3 outlined in the interrogatory response where an
4 individual in the product development department
5 destroyed some documents, not a single document but
6 a -- a collection of documents which are outlined in
7 this case in -- in the interrogatory response.

8 Q. All right. What else does Brown & Williamson
9 know about single circumstances where documents have
10 been destroyed?

11 A. It's --

12 I cannot answer that question. Brown &
13 Williamson individuals may know of individual
14 documents being destroyed. I'm sure every individual
15 in Brown & Williamson has destroyed a document at one
16 time or another. It's unreasonable to expect me to
17 come here and tell you about every instance over a
18 hundred years of being in business.

19 Q. All right. Well let me ask you this: Based on
20 the fact that plaintiffs have had these
21 interrogatories outstanding for literally years, I
22 would like to know if there are any instances where
23 smoking-and-health-related documents were destroyed
24 not in the ordinary course of business by Brown &
25 Williamson or its employees?

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1 MR. SCHNEIDER: Objection to the form,
2 asked and answered.

3 A. I'm not aware of any circumstance where, as
4 indicated in the interrogatory response, documents
5 have been transferred or destroyed related to smoking
6 and health in the ordinary course of business.
7 Indeed, Brown & Williamson has a policy of retaining
8 documents relating to smoking and health, which it
9 has had in place for a long time, and large numbers
10 of these documents have been provided in this case.

11 Q. "For a long time." How much is a long time,
12 sir?

13 A. Well, Brown & Williamson has had awareness of
14 product-litigation issues for many years, mainly
15 through the mid-'80s forward, and has had the policy
16 of communicating the requirement for employees to
17 retain documents relating to smoking and health since
18 that time and forward, which is not to say that it
19 hasn't retained documents relating to smoking and
20 health from -- prior to those -- those dates.

21 (Plaintiffs' Exhibit 60 was marked
22 for identification.)

23 BY MS. WIVELL:

24 Q. Sir, showing you what's been marked as
25 Plaintiffs' Exhibit 60, am I correct that it is a

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1 letter from Mr. Richard Schneider, who is sitting
2 next to you, to Gary Wilson dated September 5th,
3 1996?

4 A. Yes, it is.

5 Q. Sir, would you please turn to the top of page
6 three. Did you review this document in preparation
7 for your deposition today?

8 A. I have seen this document, yes.

9 Q. At the top of page three Mr. Schneider says, and
10 I quote, "As to destruction of documents, we have not
11 identified an instance where B&W has transferred
12 covered documents to a third party (excluding
13 disposal companies) for destruction based on our
14 inquiry to date. We are willing to make additional
15 inquiries of B&W personnel you reference, and of
16 course involved in B&W's documents -- document
17 collection efforts and supplement as appropriate."

18 I think I read that last part wrong, I think it
19 says, "and of counsel involved in B&W's document
20 collection efforts and supplement as appropriate."
21 Correct?

22 A. Correct.

23 Q. For the first time there's reference to
24 inquiries being made; correct?

25 MR. SCHNEIDER: Object to the form,

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1 misleading.

2 A. There's a reference to additional inquiries.

3 Q. Well it says at the end of the first sentence

4 "for destruction based on our inquiry to date;"

5 correct?

6 A. Yes.

7 Q. What inquiry had Brown & Williamson undertaken

8 to identify documents destroyed as of the date of

9 this letter?

10 MR. SCHNEIDER: Objection to the form.

11 A. As I said before, large numbers of -- of

12 inquiries were made over a period of time. I cannot

13 tell you specifically what inquiries were made at

14 what date. I -- I -- I told you I had a general

15 understanding that main inquiries started from June

16 1996 forward, and the bulk of the effort was

17 undertaken in January 1997.

18 Q. Who was interviewed as of the date of this

19 letter?

20 MR. SCHNEIDER: Object to the form, scope.

21 A. I have not prepared myself to answer that

22 question.

23 Q. What inquiry had been undertaken to -- by the

24 date of this letter?

25 MR. SCHNEIDER: Objection to the form,

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1 scope.

2 A. I have not prepared myself to answer that
3 question.

4 Q. Sir, I would appreciate it if you would find out
5 the answers to those two questions and report back to
6 me tomorrow. Would you do that?

7 A. I'll do so.

8 Q. Will you also find out who conducted the inquiry
9 that Mr. Schneider was referring to in this letter?

10 A. Yes, I will.

11 Q. Sir, could you pull out Exhibit 26. Just one
12 more time so we're all on the same page here, Exhibit
13 26 is Brown & Williamson's response -- supplemental
14 responses to certain of plaintiffs' interrogatories
15 to Brown & Williamson Tobacco Corporation which were
16 filed on February 11th, 1997; correct?

17 A. That's correct.

18 Q. And Exhibit 26 does not have the actual exhibits
19 which were filed by Brown & Williamson with the
20 interrogatory answers; right?

21 A. It does not.

22 Q. You have reviewed these interrogatory answers.

23 A. Yes, I have.

24 Q. You're fully prepared to testify about these
25 interrogatory answers today; aren't you?

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1 A. I believe I have undertaken reasonable efforts
2 to be prepared to -- to do so.

3 Q. You've read these interrogatory answers in
4 preparation for your deposition.

5 A. Yes, I have.

6 Q. You read Exhibit 26 and asked counsel questions
7 about it in preparation for your deposition; right?

8 A. Yes, I did.

9 Q. And you did ask questions during your deposition
10 preparation; didn't you?

11 A. Yes, I did.

12 Q. Are there any omissions to this interrogatory
13 answer that Brown & Williamson would like to remedy?

14 A. I'm not aware of any.

15 Q. Did you ask counsel whether there was anything
16 that needed to be added?

17 A. I do not --

18 I did not. I do know that in the interrogatory
19 responses and in various offers, if Brown &
20 Williamson does become aware of circumstances,
21 additional items, then it may -- it may provide
22 further information.

23 Q. Well I'm asking Brown & Williamson right now if
24 there's any further information that it has come
25 across that is not contained in this answer that it

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1 wants to provide to the plaintiffs right now?

2 A. I'm not aware of any.

3 Q. So to your knowledge, everything that Brown &
4 Williamson knows about the subjects of the
5 interrogatories is contained in this document which
6 is Exhibit 26.

7 MR. SCHNEIDER: Objection to the form.

8 A. No, I could not say that every single fact known
9 by Brown & Williamson relating to the subjects in
10 this response is included herein.

11 Q. All right. Well what facts are you aware of
12 that are relevant to these interrogatories that have
13 not been included?

14 A. I'm not aware of any.

15 Q. So to the best of your knowledge as the fully
16 informed spokesperson on behalf of Brown &
17 Williamson, this contains all of the information that
18 Brown & Williamson's attorneys learned while
19 conducting their investigation.

20 MR. SCHNEIDER: Objection to the form.

21 A. No, it's not my understanding that we would have
22 included all information learned during the course of
23 the inquiries; in fact, there is a large number of
24 information obtained which is not relevant or
25 responsive and has not been included in this

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1 interrogatory response.

2 Q. But all of the information concerning document
3 destruction that Brown & Williamson knows about is
4 included in these interrogatory answers; is that
5 right?

6 MR. SCHNEIDER: Objection to the form,
7 asked and answered.

8 A. No, it's not correct. It's -- it's not the case
9 that all information relating to the destruction of
10 records is included in this response since a large
11 amount of information relating to document
12 destruction is not relevant in this response.

13 Q. All right. Well using your word, has all
14 relevant information been included in this
15 interrogatory response?

16 MR. SCHNEIDER: Objection to the form,
17 asked and answered.

18 A. It's my understanding that that is the case.

19 Q. Is there anything additional that Brown &
20 Williamson wants to add to these answers?

21 A. I'm not aware of anything.

22 Q. So to the best of your knowledge, these answers
23 are accurate; is that right?

24 A. That's correct.

25 Q. So no one at Brown & Williamson has any

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1 knowledge of document destruction beyond what is here
2 in these answers?

3 MR. SCHNEIDER: Objection to the form.

4 A. As I said earlier, there is knowledge held by
5 people at Brown & Williamson relating to document
6 destruction that is not included in this
7 interrogatory response because it isn't pertinent or
8 relevant.

9 Q. All right. So let me put it this way: So no
10 one at Brown & Williamson has any knowledge of any
11 destruction of smoking-and-health-related documents
12 that might be responsive to plaintiffs'
13 interrogatories and requests for production beyond
14 what is here in these answers.

15 MR. SCHNEIDER: Objection to the form,
16 misleading, misstates scope of interrogatory.

17 A. It's my understanding that the company has had a
18 policy of retaining smoking-and-health-related
19 documents over a large number of years, but, you
20 know, that there's no --

21 No legal requirement has been in existence for
22 the whole time of the company's business to retain
23 smoking-and-health documents, but nevertheless Brown
24 & Williamson retains those documents and has provided
25 large numbers of them in this case.

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1 Q. Sir, Brown & Williamson has been continuously
2 involved in smoking-and-health-related litigation
3 since 1954; isn't that true?

4 MR. SCHNEIDER: Objection to the form.

5 A. I think that's broadly true.

6 Q. Well, have you reviewed one of the documents
7 that I designated in preparation for this deposition
8 that was signed by the corporate secretary relating
9 to and including a list of lawsuits that have been
10 filed against Brown & Williamson?

11 A. I believe I'm aware of that document.

12 Q. All right. Just a moment.

13 (Plaintiffs' Exhibit 61 was marked
14 for identification.)

15 BY MS. WIVELL:

16 Q. Sir, showing you what's been marked as
17 Plaintiffs' Exhibit 61, this is a document signed by
18 Susan Saunders as corporate secretary for Brown &
19 Williamson -- I'm sorry, assistant corporate
20 secretary for Brown & Williamson?

21 A. Yes, it is.

22 Q. And you saw this document in preparation for
23 your deposition today.

24 A. I believe I may have.

25 Q. Ms. Saunders provided a list attached to this

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1 affidavit which is --

2 Her affidavit is dated June 19th, 1996; correct?

3 A. Yes, it is.

4 Q. And she provided a list attached to this

5 affidavit of lawsuits filed against Brown &

6 Williamson Tobacco Company; right?

7 A. Yes.

8 Q. And that list shows that Brown & Williamson has

9 been continuously in litigation since 1954; right?

10 MR. SCHNEIDER: Object to the form.

11 A. I believe that's broadly true, yes.

12 Q. Well you have no information that is contrary to

13 the information provided by Ms. Saunders in her sworn

14 affidavit; do you?

15 A. I do not.

16 Q. And you understand that the information she

17 provided in this list was accurate; don't you?

18 A. I believe it to be so.

19 Q. So are you telling me that -- no, let me start

20 again.

21 You would agree that document requests were made

22 of Brown & Williamson by the plaintiffs in these

23 various cases; wouldn't you, sir?

24 A. I do not know that.

25 Q. Well you're familiar enough with litigation to

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1 know that document requests are often made in cases
2 where the plaintiff sues a defendant like Brown &
3 Williamson.

4 A. That's correct.

5 Q. And you know that Brown & Williamson could
6 reasonably anticipate that requests for production of
7 its documents would have been made in cases relating
8 to smoking and health; right?

9 A. Yes.

10 Q. In fact, you've seen some of those requests for
11 production and some of Brown & Williamson's
12 responses; haven't you, sir?

13 A. Yes, I have.

14 Q. So since 1954 has Brown & Williamson destroyed
15 smoking-and-health-related documents?

16 MR. SCHNEIDER: Objection to the form.

17 A. I'm not aware of any destruction of documents
18 that Brown & Williamson has undertaken in relation to
19 smoking-and-health documents as a means to avoid
20 discovery.

21 Q. That's not my question, sir. My question is:
22 Since 1954 has Brown & Williamson destroyed
23 smoking-and-health-related documents?

24 A. My response is that my understanding is that
25 Brown & Williamson has for a long period of time

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1 retained smoking-and-health documents for purposes of
2 litigation. It's also my understanding that from
3 time to time in different cases requirements of
4 discovery change from time to time, and that Brown &
5 Williamson has over the years, when such requirements
6 are made known to it, undertaken steps to ensure that
7 such documents are retained and not destroyed. I
8 cannot guarantee that no documents over the years
9 have never been destroyed related to smoking and
10 health. However, I do know that Brown & Williamson
11 has been very diligent in retaining such documents.
12 Q. And sir, every one of the examples of document
13 destruction which Brown & Williamson knows about
14 which are not in the ordinary course of its business
15 pursuant to its document-retention policy are listed
16 in Exhibit 26?

17 MR. SCHNEIDER: Objection to the form.

18 A. Could you repeat the question, please?

19 Q. Certainly.

20 Every one of the examples of document
21 destruction by Brown & Williamson which it knows of
22 which were not done in the ordinary course of
23 business pursuant to its document-retention policy
24 are listed in Exhibit 26; is that right?

25 MR. SCHNEIDER: Object to the form.

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1 A. No, I don't believe it's correct. I think Brown
2 & Williamson has done a due diligence review to
3 establish whether examples of circumstances such as
4 you described have been undertaken for sets of
5 documents, and we cannot -- it is not reasonable to
6 expect Brown & Williamson to outline every single --
7 single document that may have been destroyed in error
8 or because it wasn't necessary to retain in the
9 ordinary course of business.

10 Q. Sir, would you turn to page three of Exhibit 26
11 where it refers to Interrogatory No. 2 and tell me
12 where it says that plaintiffs want to know about sets
13 of documents and not individual documents?

14 A. It's my understanding that in our interrogatory
15 response, Brown & Williamson has made reference to
16 sets of documents, and that this was by agreement
17 with the court.

18 Q. Do you have an order that -- that you've seen
19 that says that sets of documents were what plaintiffs
20 were talking about and what was ordered to be
21 produced and not individual documents?

22 A. I'm not aware of a court order to that -- to
23 that issue.

24 Q. So you didn't see such an order when you were
25 making -- doing your preparation so you could come

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1 here to be fully informed and tell us the answer to
2 the questions; right?

3 A. I don't believe I did.

4 Q. Did somebody tell you there was such an order?

5 A. I don't believe they did.

6 Q. You haven't seen it and nobody told you there
7 was such an order. How did you come to believe that
8 the court had ordered that Brown & Williamson didn't
9 have to respond to this interrogatory?

10 MR. SCHNEIDER: Objection to the form.

11 A. It's my understanding that agreement was reached
12 on the nature of Brown & Williamson's response, and
13 that included no -- no requirement -- requirement to
14 list individual examples where a single document had
15 been transferred or destroyed.

16 Q. Did you see a letter that said that?

17 A. I --

18 MR. SCHNEIDER: Objection to the form.

19 A. I don't recall one.

20 Q. Did counsel tell you that there was such a
21 letter?

22 A. I recall seeing something in writing on this
23 topic. I can't recall exactly what the document was
24 that I saw.

25 Q. Just so we're clear here, the interrogatory says

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1 "Describe with specificity each instance in which
2 documents relating to smoking and health or the
3 marketing, advertising and promotion of cigarettes
4 were destroyed by your company or by persons or
5 entities acting at the direction of, in consultation
6 with, or with knowledge of your company. For each
7 instance described in response to this interrogatory,
8 state the date of the destruction, a detailed
9 description and listing of the documents destroyed
10 and the volume of documents destroyed, and all
11 persons with knowledge of the destruction;" correct?

12 A. That's substantially what it says, yes.

13 Q. By the way, Brown & Williamson in its answers,
14 if we move into the body of the document, did
15 describe certain instances when one document had been
16 discarded; correct?

17 A. I believe it did.

18 Q. And so you would agree that Brown & Williamson
19 knew that plaintiffs were asking for individual
20 instances of document destruction; isn't that sir --
21 true, sir?

22 A. No. My response would be that Brown &
23 Williamson's position, which as I understand was
24 agreed with plaintiffs, was that it would look for
25 collections of documents which had not been retained

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1 or destroyed or transferred in connection with the
2 interrogatory, but that clearly, in the course of
3 conducting its investigations as required by the
4 court order, if it came upon an example where a
5 single document may have been destroyed, it reported
6 that fact in -- in the interrogatory response.

7 Q. You haven't seen an order that says what you
8 just said, counsel didn't tell you about an order
9 that says what you just said, you haven't seen a
10 letter from counsel that says what -- what you just
11 said. How did you come to the conclusion -- how did
12 Brown & Williamson come to the conclusion that
13 plaintiffs weren't interested in individual examples
14 of document destruction?

15 A. It is my understanding that Brown & Williamson
16 indicated that it would do a due diligence search and
17 that it was unreasonable to expect this search to
18 involve looking at every single example where a
19 document may have been destroyed, a draft could have
20 been destroyed, and agreement was reached as to the
21 nature of -- of the inquiries that would be made.

22 Q. Can you point me to this agreement where it's
23 memorialized somewhere?

24 A. At this time I cannot.

25 MR. SCHNEIDER: Ms. Wivell, why don't we

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1 take a break at this point so I can confer with Mr.
2 Lowther on this topic and to avoid any further
3 confusion.

4 MS. WIVELL: Okay.

5 THE REPORTER: Off the record, please.

6 (Recess taken.)

7 BY MS. WIVELL:

8 Q. Mr. Lowther, you had the opportunity to speak
9 with Mr. Schneider and the other lawyers who are
10 representing Brown & Williamson here today during the
11 break; correct?

12 A. That's correct.

13 Q. All right. Let me ask you again: Do you
14 understand that there is a court order that orders
15 Brown & Williamson only to look for sets and not to
16 look for individual examples of documents relating to
17 smoking and health which were destroyed?

18 A. Let me respond by saying I was confused earlier
19 in my response, I think I was confused by looking at
20 certain documents that you gave me relative to
21 earlier interrogatories, and that Brown & Williamson
22 did in fact, as indicated in this response, look for
23 individual documents where its only copy of a
24 document relating to smoking and health or
25 advertising, marketing, promotion was destroyed or

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1 discarded, and it took a due diligence review to
2 ascertain whether such documents had been destroyed
3 or not received or routed, and indeed, as you pointed
4 out, had indicated some circumstances where such an
5 event did occur in its response. So it's not the
6 case that the response was -- or the review was only
7 undertaken to look for sets of documents, original
8 documents, only copy of which may have been
9 destroyed.

10 Q. Sir, and you understand that Exhibit 26 was
11 filed after the issue of document destruction was
12 brought to the attention of the court in Minnesota;
13 correct?

14 A. I'm not sure that I understand what you mean by
15 issue being brought to the attention of the court.

16 Q. Well there was a motion that was brought by the
17 plaintiffs to require Brown & Williamson to answer
18 the interrogatories that are comprised in Exhibit 26;
19 correct?

20 A. I understand that.

21 Q. And you understand that the court ordered that
22 Brown & Williamson answer with regard to each
23 instance in which documents relating to smoking and
24 health, the marketing, advertising or promotion of
25 cigarettes, were destroyed by Brown & Williamson or

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1 by persons or entities acting at the direction of or
2 in consultation or with the knowledge of Brown &
3 Williamson; correct?

4 MR. SCHNEIDER: Objection to the form.

5 A. It's my understanding that the court ordered
6 Brown & Williamson to conduct due diligence inquiry
7 of a certain scope spelled out in a court order,
8 which Brown & Williamson indeed did, and the results
9 of which are included in this interrogatory response.
10 Q. All right. I just want to go back and ask a
11 couple of questions in light of the fact you have
12 said you were a bit confused.

13 Are there any omissions to this interrogatory,
14 Exhibit 26, that you are aware of?

15 A. It's my understanding that this interrogatory
16 response contains the knowledge of Brown & Williamson
17 following the results of its due diligence review.
18 It is my understanding that, as indicated in the
19 response, after a due diligence review, if additional
20 circumstances are brought to the attention of -- of
21 the company, they will be investigated, and indeed
22 there is ongoing correspondence between plaintiffs
23 and -- and defense counsel relating to this -- these
24 issues.

25 Q. But what I'm trying to find out, and I -- I'm

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1 doing this repeating things that we covered before in
2 light of the fact that you said you were a bit
3 confused, I -- forgive me for being repetitious, but
4 I want the record to be clear.

5 Are you, as Brown & Williamson's representative,
6 aware of anything that was omitted from Exhibit 26?

7 A. I'm not aware of anything.

8 Q. Is there any additional information Brown &
9 Williamson wants to add to these interrogatories?

10 A. It is my understanding that there is
11 correspondence between plaintiffs' and defendants'
12 counsel relating to certain issues within this
13 interrogatory response.

14 Q. And when was that correspondence sent?

15 A. I'm not aware of the specific dates.

16 Q. Are you referring to a letter that was sent May
17 6th from Mr. Schneider to me and to Gary Wilson?

18 A. I don't know that I'm referring to that.

19 Q. Well what correspondence are you referring to
20 when you talk about correspondence between the
21 plaintiffs and the defendants relating to certain
22 issues within this interrogatory answer?

23 MR. SCHNEIDER: Object to the form. You
24 want to show him that letter that you just referred
25 to so his testimony is clear?

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1 (Plaintiffs' Exhibit 62 was marked
2 for identification.)

3 BY MS. WIVELL:

4 Q. Sir, showing you what's been marked as
5 Plaintiffs' Exhibit 62, that's a letter dated May
6 6th, 1997 from Mr. Schneider to Gary Wilson and to
7 me; correct?

8 A. That's correct.

9 Q. Have you seen this letter before today?

10 A. I don't believe I have.

11 Q. So when you were referring to correspondence
12 between plaintiffs and defendants in your prior
13 answer, you were not referring to Exhibit 62.

14 A. I was making reference to the fact that certain
15 inquiries have been directed by plaintiffs' counsel
16 and are being responded to in connection with the
17 issue of matters discussed in this interrogatory.
18 This is an example of such correspondence.

19 Q. What are the subjects of the correspondence that
20 you were referring to specifically?

21 A. I cannot recall any specifics.

22 Q. All right. But apart from the inquiries made by
23 plaintiffs so far, is there any additional
24 information that Brown & Williamson wants to add to
25 Plaintiffs' Exhibit 26, information that it has

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1 discovered in its -- in the period since it filed
2 this answer?

3 A. It's my understanding that as indicated in the
4 interrogatory response, in -- as it says on page 20,
5 in the event that B&W becomes aware of any additional
6 instances responsive to this interrogatory, B&W will
7 supplement its responses accordingly. I'm not aware
8 of any specific instances where that has happened,
9 where that is the case.

10 Q. Now sir, in an answer you gave just a bit ago,
11 you said that Brown & Williamson answered this
12 interrogatory with regard to instances of document
13 destruction where the only copy of something in its
14 possession was destroyed. Do you recall that?

15 A. I think that's close to what I said, yes.

16 Q. Does this Interrogatory No. 2 on page three of
17 Exhibit 26 limit the request to instances where Brown
18 & Williamson destroyed its only copy?

19 MR. SCHNEIDER: Object to the form.

20 A. No, it does not.

21 Q. In fact it asks to describe -- that Brown &
22 Williamson describe with specificity each instance in
23 which documents relating to smoking and health or the
24 marketing, advertising and promotion of cigarettes
25 were destroyed by your company or persons or entities

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1 acting at the direction of or in consultation with or
2 with knowledge of your company; right?

3 MR. SCHNEIDER: Object to the form. And we
4 need to break in order to avoid confusion.

5 MS. WIVELL: Okay.

6 THE REPORTER: Off the record, please.

7 MR. SCHNEIDER: Just momentarily.

8 (Discussion off the record.)

9 MS. WIVELL: Let me repeat the question,
10 Mr. Lowther.

11 BY MS. WIVELL:

12 Q. In fact, Interrogatory No. 26 -- I'm -- let me
13 start again.

14 In fact, Interrogatory No. 2 in Exhibit 26 asks
15 that Brown & Williamson describe with specificity
16 each instance in which documents relating to smoking
17 and health or the marketing, advertising and
18 promotion of cigarettes were destroyed by your
19 company or by persons or entities acting at the
20 direction of, in consultation with, or with knowledge
21 of your company; correct?

22 A. Yes, it does.

23 Q. It does not ask that Brown & Williamson answer
24 with regard to only documents which the company had
25 only one copy of which were destroyed; right?

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1 A. It's my understanding that the interrogatory
2 response was based on a court order which
3 incorporated reference to a motion made by plaintiffs
4 in this case that did in fact refer to circumstances
5 where documents relating to smoking and health or the
6 marketing, advertising, promotion of cigarettes were
7 destroyed and they were the only copy, although it
8 does not say that in this Interrogatory No. 2.

9 Q. Just so we're clear here, then, are you telling
10 me that instances where smoking-and-health-related
11 documents responsive to plaintiffs' request for
12 production were destroyed by Brown & Williamson or
13 persons acting with knowledge or at the direction of
14 or in consultation with Brown & Williamson that are
15 not listed in this document because of the assumption
16 that the court's order only involved instances where
17 B&W was destroying its only copy?

18 A. It is my understanding that the due diligence
19 inquiry was made to ascertain circumstances where the
20 only copy of documents relating to smoking and health
21 or marketing, advertising or promotion were
22 destroyed, and that that is the way the interrogatory
23 response has been couched in accordance with the
24 court order and plaintiffs' motion to compel.

25 Q. Sir, didn't you understand that Interrogatory

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1 No. 2 was what the court ordered to be answered?

2 MR. SCHNEIDER: Objection to the form.

3 A. It's my understanding that the court ordered
4 Brown & Williamson to respond based on the definition
5 of your motion to compel.

6 MS. WIVELL: Sir, move to strike as
7 non-responsive.

8 Q. Isn't it true that the court ordered
9 Interrogatory No. 2 be answered?

10 MR. SCHNEIDER: Objection to the form,
11 asked and answered.

12 A. It's my understanding that the court ordered
13 Brown & Williamson to respond in a certain way, which
14 differs in some respects from the way it is outlined
15 in Interrogatory No. 2.

16 Q. Sir, didn't the court order the language of
17 Interrogatory No. 2 be answered by Brown &
18 Williamson?

19 MR. SCHNEIDER: Object to the form, asked
20 and answered.

21 A. My understanding is that it required Brown &
22 Williamson to -- to respond as modified by
23 plaintiffs' motion.

24 Q. Sir, are you telling me that Brown & Williamson
25 answered differently from the specific language

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1 ordered -- directed by the court?

2 MR. SCHNEIDER: Objection, misleading.

3 A. No, I'm not.

4 Q. Sir, it says at the bottom of Interrogatory No.
5 2, "This order shall encompass document destruction
6 as well as documents subject to any instruction,
7 directive, practice, or understanding (1) that
8 documents not be sent to a defendant, paren, from,
9 for example, a scientific research organization or --
10 or an advertising agency, paren, and thus not, quote,
11 retained, quote, by a defendant, or, paren two, that
12 documents be routed through or to a third party, and
13 thus not 'retained' by a defendant." Correct?

14 A. Yes, it does.

15 Q. Sir, and isn't it true that the court ordered
16 the exact language of Interrogatory No. 2?

17 MR. SCHNEIDER: Objection, misleading,
18 asked and answered.

19 A. It's my understanding that the court order did
20 modify certain aspects of Interrogatory No. 2.

21 Q. And what aspects were modified?

22 A. It's my understanding that at least in
23 conjunction with the reference to the only copy of a
24 document related to smoking and health or marketing,
25 advertising or promotion of cigarettes was -- was a

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1 key amendment.

2 Q. And that is specifically included, according to
3 your testimony, in the court order which relates to
4 Interrogatory No. 2?

5 MR. SCHNEIDER: Objection to the form.

6 A. I cannot confirm that it was specifically
7 included, but it was certainly included.

8 Q. Well, if the court didn't put it in its order in
9 writing that it signed, how could it have been
10 included, sir?

11 MR. SCHNEIDER: Objection to the form.

12 A. It may have been incorporated by reference to
13 your motion to compel. I -- I -- I do not know.

14 Q. Sir, isn't it a fact that that's just an
15 interpretation that Brown & Williamson chose to place
16 on Interrogatory No. 2 while doing this answer?

17 MR. SCHNEIDER: Objection to the form,
18 misleading.

19 A. My response is that Brown & Williamson has
20 complied with the court order, it has undertaken due
21 diligence to do that, and indeed has indicated
22 clearly in its interrogatory response those things
23 that it undertook and the basis upon which it
24 established the facts which are incorporated in this
25 response.

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1 Q. I'm curious, sir. Would you turn to page two,
2 the list of people who are included there. How did
3 these --

4 These particular 77 people, how were they chosen
5 to be interviewed?

6 A. It's my understanding the process was initially
7 that a search was undertaken for documents which
8 referenced destruction of documents related to
9 smoking-and-health advertising and marketing or
10 documents generally relating to -- to destruction.
11 Based on that research of databases held for
12 litigation purposes, individuals which were
13 identified either in those documents or through
14 association with those documents were then
15 interviewed as part of this process, and those
16 individuals are identified in this response.

17 Q. Well sir, I -- I notice that Earl Kohnhorst's
18 name doesn't appear here; does it?

19 A. That's correct.

20 Q. Now he was the head of R&D for Brown &
21 Williamson; wasn't he?

22 A. Yes, he was at one time.

23 Q. And then he went -- became a vice-president of
24 Brown & Williamson; right?

25 A. He was a vice-president, that's correct.

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1 Q. He was not interviewed or contacted at all
2 regarding document destruction?

3 A. It is my understanding that he has -- he has
4 been interviewed by King & Spalding or has been
5 interviewed by outside attorneys.

6 Q. Well my question is: Was he interviewed with
7 regard to document destruction or transfer?

8 A. I believe he was.

9 Q. Why wasn't his name included among those people
10 who are listed here who were interviewed?

11 MR. SCHNEIDER: Objection to the form.

12 A. My -- my response would be that, as I said
13 earlier, inquiries were generally made in the result
14 of -- of going through due diligence reviews. These
15 people were people who were interviewed specifically
16 in conjunction with document destruction and -- and
17 retention. Other interviews may have been and other
18 conversations may have been held. I believe that
19 conversations were held with Earl Kohnhorst, but they
20 may not have been directly and expressly as a result
21 of the due diligence review undertaken in response to
22 this interrogatory. Nevertheless, elements of Earl
23 Kohnhorst's knowledge were obtained and have been
24 used, I think, in putting together the facts included
25 in this interrogatory response.

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1 Q. So then if what you just said is true, B&W's
2 response to Interrogatory No. 1 is not correct.

3 MR. SCHNEIDER: Objection to the form.

4 Prior to responding, do you -- did you show him
5 the August 23 response? You asked him about that
6 earlier. I just don't see it here.

7 MS. WIVELL: I'm not sure, but since
8 there's a question pending, let's get the answer to
9 the question.

10 MR. SCHNEIDER: Object to the form.

11 THE WITNESS: Please repeat the question.

12 Q. Sir, if what you just said is true, that Mr.
13 Kohnhorst's knowledge was obtained and has been used
14 in putting together the facts included in this
15 interrogatory answer, then Brown & Williamson's
16 answer to Interrogatory No. 1 is not correct.

17 MR. SCHNEIDER: Objection to the form.

18 A. I don't know that that -- that is the case.

19 Q. Well, let's take a look at the question. It
20 says, "Identify each person who provided any
21 information which forms the basis of response to any
22 of these interrogatories and for each person identify
23 which interrogatories or parts thereof for which such
24 person provided information." Now you just told us
25 that you thought that Kohnhorst's information was

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1 used, included in putting together these answers.

2 MR. SCHNEIDER: Objection.

3 Q. If that's true, then Brown & Williamson's
4 response to Interrogatory No. 1 is not correct; isn't
5 that right?

6 MR. SCHNEIDER: Objection to the form.

7 A. It may be that Mr. Kohnhorst was referenced in
8 an earlier response, and since this response
9 incorporates earlier responses, then it would not be
10 incorrect.

11 Q. Are you referring, when you say "to an earlier
12 response," that list of people who were knowledgeable
13 that we talked about earlier this morning?

14 A. I -- I'm speculating that Mr. Kohnhorst's name
15 may have been on that list.

16 Q. All right. Well let's take a look. Let's get
17 that out and we can see -- I'm sorry. The list
18 includes -- let me start grain.

19 The list includes Grass, Eckman, Glassner,
20 McGraw, Frick, Brown, Lincoln, Pebbles, Riehl, Wells
21 and Eckman; right?

22 MR. SCHNEIDER: Objection to the form.

23 A. I don't have the list in front of me.

24 Q. To the best of your recollection, those are the
25 people that we talked about this morning; right?

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1 A. I think so.

2 Q. All right. And if his name isn't included in
3 that interrogatory answer and it's not included here,
4 then Brown & Williamson's response to Interrogatory
5 No. 1 is not accurate; isn't that true?

6 MR. SCHNEIDER: Object to the form.

7 A. It's my understanding that we have endeavored to
8 identify people who provided information forming the
9 basis of this -- this response. As I said earlier,
10 there may be other people who provided information in
11 respect of Mr. Kohnhorst. I'm not sure that -- the
12 extent to which inquiries were made of him.

13 Q. Well I'm just curious, then, how you could have
14 testified that his information was included in these
15 interrogatory answers.

16 A. Well it is my understanding and my recollection
17 that Mr. Kohnhorst provided some information in the
18 context of reviewing certain information. It may
19 have been that it was not relevant to the destruction
20 of documents, it may have been relating to something
21 else. So I cannot -- I cannot tell you that Mr.
22 Kohnhorst's name should have been included in this --
23 this -- this listing.

24 Q. Sir, you testified, and I quote, "Nevertheless,
25 elements of Earl Kohnhorst's knowledge were obtained

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1 and have been used, I think, in putting together the
2 facts included in this interrogatory response," close
3 quote.

4 If that is true, your testimony, assuming the
5 truth of it, means that Brown & Williamson's
6 interrogatory response to request number one is not
7 correct.

8 MR. SCHNEIDER: Objection to the form.

9 A. It's my understanding that Brown & Williamson
10 was required to identify those people who provided
11 the facts which were incorporated in this response,
12 those people that are knowledgeable. Clearly, Mr.
13 Kohnhorst had some knowledge. It may not have been
14 material or --

15 I'm speculating as to why his name is not listed
16 here.

17 Q. Sir, isn't it true that Mr. Kohnhorst received
18 documents from Mr. Wells concerning the subject of
19 document transfer?

20 MR. SCHNEIDER: Objection to the form.

21 A. I don't know that that's true.

22 MR. SCHNEIDER: Let me take a momentary --

23 Q. Well sir --

24 MR. SCHNEIDER: -- break to avoid
25 confusion.

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1 THE REPORTER: Off the record, please.
2 (Discussion off the record.)
3 (Luncheon recess taken at 12:06 o'clock
4 p.m.)

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1 AFTERNOON SESSION

2 (Deposition reconvened at 1:37 o'clock
3 p.m.)

4 BY MS. WIVELL:

5 Q. When we broke right before lunch, sir, I had
6 asked you if it wasn't true that Mr. Kohnhorst had
7 received documents from Mr. Wells concerning the
8 subject of document transfer. Do you recall that?

9 A. I do.

10 Q. And at the time you said, "I don't know that
11 that's true." Right?

12 A. That's correct.

13 Q. Have you learned to the contrary over the lunch
14 break?

15 A. I don't know that I have learned specifically in
16 connection with that document, no, I did not learn at
17 the lunch break.

18 Q. Well did you learn over the lunch break that Mr.
19 Wells had sent Mr. Kohnhorst documents concerning the
20 subject of reports received from BAT Co?

21 MR. SCHNEIDER: Objection to form.

22 A. I did not. I am aware that Mr. Wells prepared a
23 file note that discussed documents in R&D, if that's
24 what you're referring to.

25 Q. Why don't you tell me what you understand the

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1 subject of that file note to be.

2 A. It's a file note prepared relating to the
3 treatment of excess scientific reports held in the
4 research and development library in 1985.

5 Q. Did you understand that Mr. Wells had sent a
6 copy of that to Mr. Kohnhorst?

7 A. No, I did not.

8 Q. So if Mr. Wells had sent Mr. Kohnhorst copies of
9 documents concerning the treatment of R&D reports
10 received from Great Britain, you're unaware of it.

11 MR. SCHNEIDER: Objection to the form.

12 You want to put the document before him?

13 A. I would say that I -- I cannot recall a document
14 along the lines of the express nature that you
15 mentioned. I'm aware that I have seen documents
16 authored by -- or I have had portions read to me of
17 documents authored by Mr. Wells, which may have been
18 to Mr. Kohnhorst. I cannot recall the exact nature.

19 Q. What documents do you recall being read to or
20 having seen from Mr. Wells?

21 A. I recall the deadwood memo, which is included in
22 this interrogatory response.

23 Q. Any others?

24 A. I recall another memo included in this response
25 that I believe is from Mr. Wells relating to legal

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1 holds.

2 Q. Anything else?

3 A. I don't recall any specific documents, no.

4 Q. Sir, before we went to lunch we were discussing
5 the Interrogatory No. 1 and the list of names which
6 does not include Mr. Kohnhorst's. This list of names
7 also does not include the name of Robert Sachs; does
8 it?

9 A. I believe that my understanding relative to the
10 absence or presence of Mr. Kohnhorst's name in that
11 list is that inquiries were made of Mr. Kohnhorst
12 pursuant to another interrogatory, and that
13 additional inquiries have subsequently been made of
14 Mr. Kohnhorst relative to the transfer and possible
15 destruction of documents, and -- and that it may have
16 been that Mr. Kohnhorst's name should have been
17 included in -- in that listing, but it has been not
18 so. But this is an inadvertent oversight. And
19 indeed, my understanding is that Mr. Kohnhorst's name
20 has been referenced in correspondence to plaintiffs
21 from in-house counsel and included in an earlier
22 response to another interrogatory.

23 I believe, too, that Mr. Esterly, whose name is
24 also not included on that listing but is mentioned in
25 the interrogatory response of February 1997, was also

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1 perhaps inadvertently left out from the listing.

2 MR. SCHNEIDER: Ms. Wivell, may I
3 interrupt. Mr. Lowther mentioned letters from
4 in-house counsel to plaintiffs' lawyers. I believe
5 he means outside counsel. That's an error I think we
6 should correct.

7 MS. WIVELL: Do you adopt what your counsel
8 just said?

9 THE WITNESS: I -- I agree. It was
10 misspeaking on my part.

11 MS. WIVELL: Move to strike as
12 non-responsive.

13 Q. Sir, my question was: Mr. Robert Sachs' name is
14 also not included among those who are listed under
15 Interrogatory No. 1; right?

16 A. That's correct.

17 Q. Now he was B&W's former general counsel;
18 correct?

19 A. I understand he was in our law department. I
20 don't -- not sure what function he had there.

21 Q. You understand -- stood, though, that he was one
22 of B&W's counsel; right?

23 A. I believe so.

24 Q. Do you know if he was interviewed for these
25 interrogatories?

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1 A. I do not know.

2 MR. SCHNEIDER: Ms. Wivell, if I may
3 interrupt again. We prepared this list of names.
4 Mr. Kohnhorst's name should be on this list, Mr.
5 Esterly's name should be on this list, Mr. Sachs'
6 name should be on this list. It is my error that
7 they are not, that they are left off this list.

8 MS. WIVELL: All right.

9 Q. Well let me ask you this, Mr. Lowther, on Brown
10 & Williamson's behalf: Are there any other additions
11 or corrections or omissions to these interrogatories
12 that have been marked as Exhibit 26 that we have not
13 discussed here today?

14 A. In my response I would say that Brown &
15 Williamson prepared the interrogatory response in a
16 good-faith effort after a due diligence -- due
17 diligence search. We have completed the response and
18 included all the information that's pertinent and we
19 have said that if, in the case of other inquiries,
20 additional information comes to our attention, then
21 we will supplement our response. But I am not aware
22 of anything specific that we would need to supplement
23 our response with at this time.

24 Q. You understand, Mr. Lowther, I asked you on two
25 occasions before lunch, if there were any additions

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1 or omissions, I gave Brown & Williamson the
2 opportunity to supplement its responses. And is it
3 correct that you gave me no additional information or
4 supplementary information at the time?

5 A. As I said, I believe, at the time, I'm not aware
6 of any supplemental information that Brown &
7 Williamson has to provide.

8 Q. But we've now learned just within the space of a
9 few moments that at least three people who played
10 major roles in Brown & Williamson's
11 smoking-and-health issues -- issues at Brown &
12 Williamson relating to smoking and health were not
13 placed on this list; correct?

14 MR. SCHNEIDER: Object to the form.

15 A. My response is that in connection with at least
16 two of those, their names have been mentioned in
17 interrogatory responses and correspondence. And it
18 may well be that in connection with Mr. Sachs, his
19 name has been mentioned in correspondence, I do not
20 know. But the inadvertent omission of -- of their
21 names is an oversight and by no means is it a
22 deliberate attempt to falsify information.

23 Q. Well sir, I see that Mr. M. L. Reynolds' name is
24 also not included here. Was he contacted to
25 determine whether he had information pertinent to

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1 these interrogatories?

2 A. I do not know.

3 Q. How about Nick Brooks, whose name is also

4 omitted. He's the CEO of Brown & Williamson;

5 correct?

6 A. That's correct.

7 MR. SCHNEIDER: Object to the form.

8 Q. Was he contacted to find out whether he had any

9 information about document destruction or

10 transmission?

11 A. I do not know.

12 Q. How about Doug Litwin? He was an employee who

13 was actually mentioned in the interrogatory answers

14 but he's not listed here as someone who was

15 interviewed. Was he interviewed in response to

16 these -- I'm sorry.

17 Was he interviewed when these interrogatories

18 were being prepared?

19 A. If I can get Mr. Litwin's section.

20 I do not know the answer to that.

21 Q. Well his name is not listed among the people who

22 were interviewed; correct?

23 A. That's correct.

24 Q. Do you know whether he was another inadvertent

25 omission?

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1 A. I can respond that it is my understanding that
2 the listing of names was a list of those people that
3 were interviewed and had information which was used
4 to compile the response to this interrogatory. I
5 can't guarantee that there are no further omissions,
6 and I'm sure we'll be glad to correct them if they're
7 brought to our attention.

8 Q. So are you saying it's plaintiffs'
9 responsibility to -- strike that.

10 Let me ask you this: There's a T. H. Hughes
11 listed on here. Who is T. H. Hughes?

12 A. I do not know who H. T. Hughes is.

13 Q. I'm sorry. You don't know who H. T. Hughes is;
14 correct?

15 A. That's right.

16 Q. Now there was a Hughes who was president and CEO
17 of Brown & Williamson; correct?

18 A. I believe that's right.

19 Q. Do you know what Mr. -- the Hughes who was
20 president and CEO of Brown & Williamson, what his
21 first name was?

22 A. I do not.

23 Q. So you don't know whether the Hughes that's
24 listed here is the Hughes who was president and CEO
25 of Brown & Williamson.

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1 A. I don't believe it is.

2 Q. Is the Mr. Hughes who is president and CEO of

3 Brown & Williamson still alive?

4 A. I do not know.

5 Q. So you just don't know as you sit here today

6 whether the Mr. Hughes that was president and CEO of

7 Brown & Williamson was ever talked to with regard to

8 whether documents were destroyed or transferred.

9 A. I don't know.

10 MR. SCHNEIDER: Ms. Wivell, for what it's
11 worth, I believe Mr. Hughes is deceased. That's the
12 information I have.

13 MS. WIVELL: Do you happen to know his
14 first name?

15 MR. SCHNEIDER: I think it's I. W. Hughes.

16 MS. WIVELL: Thank you.

17 MR. SCHNEIDER: Is that right?

18 MS. FOX: That's correct.

19 MS. WIVELL: Thank you.

20 Q. I notice that Jeffery Wigand's name is not on
21 here.

22 Am I pronouncing his last name right?

23 A. I believe you are.

24 Q. His name is not on this list; is he?

25 A. That's correct.

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1 Q. Now you're aware that Mr. Wigands --

2 By the way, it's Dr. Wigand; isn't it?

3 A. Yes, it is.

4 Q. You're aware that Dr. Wigand has asserted that
5 Brown & Williamson destroyed documents in his files;
6 correct?

7 A. My understanding is that Brown & Williamson did
8 not believe that Mr. Wigand will be a credible
9 witness in providing facts in preparation for this
10 interrogatory, and therefore he was not interviewed
11 in preparation for this.

12 MS. WIVELL: Move to strike as
13 non-responsive.

14 Q. Sir, you're aware that Dr. Wigand has asserted
15 that Brown & Williamson destroyed documents from his
16 files; correct?

17 MR. SCHNEIDER: Object to the form.

18 A. I'm not aware of any express allegations Mr.
19 Wigand has made.

20 Q. You've not read portions of his deposition where
21 he asserts directly that his files -- portions of his
22 files were destroyed?

23 A. I have not read the deposition. I recall -- I
24 recall that a portion may have been read to me.

25 Q. And the portion that was read to you concerned

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1 Dr. Wigand's assertion that once he was fired from
2 Brown & Williamson, parts of his files were
3 destroyed; correct?

4 MR. SCHNEIDER: Objection to the form.

5 A. I don't recall the exact piece that was read to
6 me.

7 Q. Well, sir, that was the gist of the piece that
8 was read to you.

9 A. Yes, I believe it was.

10 Q. Now Brown & Williamson has not disclosed the
11 destruction of Dr. Wigand's files in its -- its
12 interrogatories which are Exhibit 26; has it?

13 MR. SCHNEIDER: Object to the form.

14 A. It's my understanding that Brown & Williamson,
15 after a due diligence review, has established facts
16 and disclosed circumstances where its only copy of
17 documents relating to smoking and health,
18 advertising, marketing, promotion, may have been
19 destroyed, but it has not as part of that process
20 inquired of Dr. Wigand because it was not believed
21 that Dr. Wigand would be a credible witness in this
22 case.

23 Q. So are you saying -- and by "you" I mean Brown &
24 Williamson -- saying that Dr. Wigand's files or at
25 least parts of Dr. Wigand's files were not

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1 destroyed?

2 MR. SCHNEIDER: Object to the form.

3 A. I'm saying that the interrogatory response that
4 Brown & Williamson has prepared includes information
5 on all the facts relating to document destruction
6 that Brown & Williamson has been aware of after
7 completing a due diligence review, which did not
8 include an interview of Dr. Wigand.

9 Q. Well I understand that it did not include an
10 interview of Dr. Wigand. I am asking you: Did Brown
11 & Williamson destroy Dr. Wigand's files or any parts
12 thereof after he was fired?

13 MR. SCHNEIDER: Object to the form, outside
14 the scope.

15 A. I'm not aware of any destruction of Dr. Wigand's
16 files.

17 Q. Sir, are you testifying personally or on behalf
18 of Brown & Williamson when you give that answer?

19 A. It is my understanding that after a due
20 diligence review conducted by Brown & Williamson to
21 establish the facts related to documents which may
22 have been destroyed which were the only copy of
23 advertising, marketing or promotion or a
24 smoking-and-health document, and after conducting
25 such a due diligence review no evidence has been

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1 found of any destruction of any files, whether they
2 be Dr. Wigand's or -- or other's, which have been
3 included in the interrogatory response which indicate
4 any destruction of smoking-and-health documents held
5 by Dr. Wigand.

6 Q. Okay. Just so we're clear here, interrogatory
7 response Exhibit 26 doesn't mention anything about
8 Jeffery Wigand's files; does it?

9 MR. SCHNEIDER: Object to the form.

10 A. I cannot confirm or deny that it has a reference
11 to Jeffery Wigand's files. There is no express
12 reference to any file of Jeffery Wigand's.

13 Q. All right. Sir, it is true, is it not, that
14 after Jeffery Wigand was fired from Brown &
15 Williamson, Brown & Williamson personnel destroyed
16 portions of his file?

17 MR. SCHNEIDER: Object to the form.

18 A. I do not know that.

19 Q. Is it your testimony on behalf of Brown &
20 Williamson that it did not destroy Jeffery Wigand's
21 files or parts thereof?

22 A. It's my testimony that Brown & Williamson
23 reviewed its documents for -- for records which
24 referenced document destruction of the only copy of
25 documents relating to smoking and health and

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1 advertising, marketing and promotion. It did not
2 include a full-scale review of any specific person's
3 general files which may not be related to smoking and
4 health and which may have been destroyed, so I cannot
5 tell you that --

6 Q. Well sir --

7 A. -- any --

8 Q. I'm sorry.

9 A. I cannot tell you that any documents that Dr.
10 Wigand may have held which were not related to
11 smoking and health and which may have been destroyed
12 didn't -- I can't tell you that that did not happen.

13 Q. Sir, it did happen; didn't it?

14 A. I do not know that.

15 MR. SCHNEIDER: Object to the form.

16 Q. Well, when counsel read you the portion of Mr.
17 Wigand's deposition where he said that files of his
18 were destroyed after he was fired, did you ask him
19 whether it happened?

20 MR. SCHNEIDER: Object to the form.

21 A. No, I did not.

22 Q. Did they tell you that it did?

23 A. No, they did not.

24 Q. What did they say happened to Dr. Wigand's
25 files?

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1 A. That was not an issue that was discussed.

2 Q. Did they tell you that he was full of hot air
3 and it didn't happen?

4 MR. SCHNEIDER: Objection to the form.

5 A. They did not.

6 Q. Sir, his secretary --

7 By the way, Jeffery Wigand was chair of RD&E at
8 Brown & Williamson; wasn't he?

9 A. I'm not sure that I know what his -- his title
10 was.

11 Q. He worked in research and development; didn't
12 he?

13 A. He was vice-president of research and
14 development, that's correct.

15 Q. And isn't it true that after he was fired, Brown
16 & Williamson destroyed portions of Jeffery Wigand's
17 files?

18 MR. SCHNEIDER: Objection to the form,
19 asked and answered.

20 A. I can respond that as a matter of -- of good
21 practice, when an employee leaves Brown & Williamson,
22 files may be destroyed because they're no longer
23 useful, they're not required to be retained by legal,
24 business or tax reasons, and such documents are
25 destroyed from time to time.

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1 Q. Now --

2 A. I -- I cannot point to a specific example
3 related to Dr. Wigand, and I can't confirm or deny
4 such an event occurred.

5 Q. Sir, as part of Brown & Williamson's regular
6 document-control policy, it's the policy that
7 everyone is to list the type of documents they have
8 in their files; correct?

9 A. No. Brown & Williamson's policy is that
10 departments are required to list the documents that
11 they are supposed to retain and to make sure that
12 they retain such documents.

13 Q. Well sir, Brown & Williamson doesn't allow the
14 random destruction of documents on a whim; does it?

15 A. Brown & Williamson has undertaken over many
16 years practices relating to document retention to
17 ensure that it does retain documents which are
18 required for legal, tax and business reasons, and --
19 and that documents that are not required for those
20 reasons are not retained, and it does that and it has
21 done that over many years.

22 Q. And sir, isn't it true that at the time Jeffery
23 Wigand was fired, that there was a legal hold on all
24 smoking-and-health-related documents?

25 MR. SCHNEIDER: Objection to the form.

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1 A. In 1993 it is my understanding that there was
2 a -- a hold on smoking-and-health documents, that's
3 correct.

4 Q. And Dr. Wigand was working on smoking-and-
5 health-related issues relating to his activities in
6 R&D; wasn't he?

7 MR. SCHNEIDER: Objection to the form,
8 scope.

9 A. Dr. Wigand as head of R&D had various
10 responsibilities and duties, some of which included
11 some smoking-and-health awareness and
12 responsibilities, yes.

13 Q. Now sir, one of the people who is listed on
14 Exhibit 26 is Jeffery Wigand's secretary; isn't that
15 true?

16 A. That's correct.

17 Q. Her name is Martha Thomas; isn't it?

18 A. That's correct.

19 Q. Was she interviewed to determine whether or not
20 portions of Dr. Wigand's files were destroyed by
21 Brown & Williamson after he was fired by the company?

22 A. Well I can tell you that Martha Thomas was
23 interviewed. I cannot tell you in what connection
24 that interview was undertaken.

25 Q. All right. Please tell us everything you know

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1 factually about the interview of Martha Thomas and
2 what she told Brown & Williamson's outside counsel
3 concerning document destruction and document
4 transfer.

5 MR. SCHNEIDER: Objection, outside the
6 scope.

7 A. I've not -- not prepared to come here today to
8 outline the exact nature of every interview that's
9 been undertaken with a large number of people in
10 pulling together this -- this interrogatory
11 response. I can tell you that due diligence review
12 was done and the results of that are included in this
13 interrogatory response.

14 Q. Well did your due diligence review for Brown &
15 Williamson happen to turn up the list of the files
16 from Dr. Wigand's files which were destroyed by Brown
17 & Williamson two weeks after he was fired?

18 MR. SCHNEIDER: Object to the form.

19 A. I'm not aware of that.

20 Q. Counsel didn't mention the existence of that
21 list to you?

22 A. My response is that what is included in this
23 interrogatory response is reference to any
24 circumstance which Brown & Williamson is aware of
25 where we have ascertained that the only copy of a

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1 document relating to smoking and health, advertising,
2 marketing and promotion, has been destroyed or routed
3 so as not to be received or -- so on. We have
4 included instances where that has happened or where
5 we have information or somebody with knowledge has
6 affirmatively stated that such a document has been
7 destroyed. We have not included circumstances where
8 nobody has been able to -- nobody with knowledge has
9 been able to affirmatively state that the only copy
10 of such a document has been destroyed. And in
11 addition, we have included answers to -- or we have
12 included facts relating to documents which have been
13 in the public domain and where people have
14 misconstrued the events, and we have taken the
15 opportunity to clarify the circumstances.

16 MS. WIVELL: Move to strike as
17 non-responsive.

18 Q. My question to you is, sir: Counsel didn't tell
19 you that a list of files from Jeffery Wigand were
20 destroyed?

21 MR. SCHNEIDER: Object to the form.

22 A. As I mentioned earlier, after doing -- doing the
23 due diligence review, we have incorporated every
24 circumstance known to Brown & Williamson where
25 documents have been destroyed relating to smoking and

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1 health, advertising, marketing and promotion, which
2 is the only copy, and evidently any destruction of
3 Mr. Wigand's or Dr. Wigand's copies did not fall into
4 that category.

5 Q. Sir, isn't it true that Brown & Williamson has a
6 multi-page document listing the files from Jeffery
7 Wigand which were destroyed?

8 MR. SCHNEIDER: Object to the form.

9 A. I don't know.

10 Q. Counsel never mentioned that multi-page document
11 to you; did they?

12 A. I don't recall that.

13 Q. And it certainly isn't included in the
14 information in Brown & Williamson's interrogatory
15 answers; is it?

16 A. I don't recall it.

17 (Plaintiffs' Exhibit 63 was marked
18 for identification.)

19 BY MS. WIVELL:

20 Q. Sir, showing you what's been marked as
21 Plaintiffs' Exhibit 63, it is a portion of Brown &
22 Williamson's 4B index relating to document 682741479
23 to 83; correct?

24 A. That's what it says.

25 Q. And would you please tell us the title according

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1 to this 4B entry for this document?

2 A. "Files from J Wigand destroyed."

3 Q. So this multi-page document entitled "Files from
4 J Wigand destroyed" just didn't surface during Brown
5 & Williamson's due diligence?

6 MR. SCHNEIDER: Objection to the form,
7 misleading.

8 A. I cannot confirm that it did not surface. I can
9 tell you that there may well have been files from Mr.
10 Wigand's offices which were destroyed following his
11 departure. However, if they were not the only copy
12 of documents relating to smoking and health or
13 advertising, marketing, promotion, then there was no
14 requirement -- requirement for Brown & Williamson to
15 indicate those facts in the interrogatory response,
16 nor would it have done so.

17 Q. Sir, are you telling us that Jeffery Wigand
18 didn't have personal notes or notations on the
19 documents contained in these files?

20 MR. SCHNEIDER: Object to the form.

21 A. I cannot -- I cannot tell you.

22 Q. You didn't even know about this document that's
23 referred to here before I showed you this particular
24 portion of B&W's 4B; did you?

25 A. I did not.

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1 Q. And there's no way, if these documents are
2 destroyed, for us to test the accuracy of the
3 assertion that there weren't original documents in
4 those files; correct?

5 MR. SCHNEIDER: Object to the form.

6 A. Well my understanding is that searches were done
7 of databases, and as part of the due diligence
8 review -- it would be my assumption that as part of
9 that, since the title of these records had the name
10 "destroyed" in it, that inquiries would have been
11 made along these lines. It is my belief that since
12 there are no indications in the interrogatory
13 response relating to destruction of these files, then
14 the files probably did not contain Brown &
15 Williamson's only copy of documents relating to
16 smoking and health, advertising, marketing and
17 promotion.

18 Q. Sir, you don't know that for a fact; do you?

19 A. I do not.

20 Q. As a matter of fact, you knew that Mr. Wigand
21 had made assertions that his files had been
22 destroyed; correct?

23 A. I was aware of -- of that allegation.

24 Q. And in fact you told us he wasn't -- you, Brown
25 & Williamson thought -- a very good witness on this

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1 subject, so it didn't bother to interview him;

2 correct?

3 MR. SCHNEIDER: Object to the form.

4 A. Can you repeat the question, please?

5 Q. Certainly.

6 You told us that Brown & Williamson thought Mr.

7 Wigand wasn't going to be a very good witness on this

8 subject, so it didn't bother to interview him;

9 correct?

10 MR. SCHNEIDER: Object to the form.

11 A. My understanding is that Brown & Williamson does

12 not believe Mr. Wigand to be a credible witness.

13 Q. Well, he certainly was right that his files were

14 destroyed; wasn't he?

15 MR. SCHNEIDER: Objection to the form.

16 A. I don't know. I cannot testify on that basis.

17 Q. Well, sir, at least according to what it looks

18 like the title of this document is, there's a

19 five-page document out there that's listing files

20 from his, Jeffery Wigand's, files which were

21 destroyed by Brown & Williamson two weeks after he

22 was fired; correct?

23 MR. SCHNEIDER: Object to the form.

24 A. I don't know that I can confirm all of the

25 elements in your question. I can confirm that we had

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1 a document entitled "Files from J Wigand destroyed."

2 Q. Well, we know that Brown & Williamson made an
3 entry on its 4B and supplied a document with that
4 name, too; don't we?

5 A. That's correct.

6 Q. Do you know what happened to that document,
7 sir?

8 MR. SCHNEIDER: Objection to the form.

9 A. I imagine that if it was not privileged, it was
10 produced.

11 Q. Have you seen that document?

12 A. I don't believe I have.

13 Q. Can you explain to me why the day after Brown &
14 Williamson filed its interrogatory answers, which are
15 Exhibit 26, why it pulled this document, the list of
16 Jeffery Wigand's destroyed files, back from the
17 Minnesota depository?

18 MR. SCHNEIDER: Object to the form.

19 A. No, I cannot.

20 Q. Did you know that that occurred?

21 A. No, I did not.

22 MR. SCHNEIDER: Object to the form.

23 MS. WIVELL: Sir, I'm going to have the
24 court reporter mark a Minneapolis document depository
25 document notation sheet.

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1 (Plaintiffs' Exhibit 64 was marked
2 for identification.)

3 BY MS. WIVELL:

4 Q. Sir, showing you what's been marked as
5 Plaintiffs' Exhibit 64, am I correct that it is a
6 Minneapolis document depository document notation
7 sheet?

8 A. It is so headed.

9 Q. All right. And it concerns box 1295?

10 A. Yes, it does.

11 Q. Sir, the last number that's listed in the Bates
12 range is Bates number 8 -- I'm sorry, is Bates
13 number 682741479-483; correct?

14 A. That's correct.

15 Q. That is the same Bates number as the document
16 entitled "Files from J Wigand destroyed;" correct?

17 A. It's the same range as in Exhibit 63, that's
18 correct.

19 Q. Why did, the day after its document-destruction
20 and -transfer interrogatories were filed in this
21 case, did Brown & Williamson pull this document out
22 of the Minnesota depository?

23 MR. SCHNEIDER: Object to the form,
24 misleading.

25 A. I have no knowledge as to the fate or

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1 disposition of this particular document.

2 Q. Well sir, I'd really like to see that document
3 and I'm going to ask that you produce it during this
4 deposition so that we can discuss it and discuss the
5 contents of that document. I would appreciate
6 receiving a copy of it tomorrow at the beginning of
7 this deposition. Will you look into that for me,
8 sir?

9 A. I'll look into it, and if I can, I will endeavor
10 to do so.

11 MR. SCHNEIDER: We'll take a break at this
12 point.

13 MS. WIVELL: Certainly.

14 THE REPORTER: Off the record, please.

15 (Recess taken.)

16 BY MS. WIVELL:

17 Q. Sir, after Jeffery Wigand was fired from Brown &
18 Williamson, he appeared on 60 Minutes; right?

19 A. I believe he did.

20 Q. And during that appearance on 60 Minutes he said
21 something to the effect that files from his R&D files
22 at Brown & Williamson had been destroyed after he was
23 fired; correct?

24 MR. SCHNEIDER: Object as to the form,
25 outside the scope.

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1 A. I don't recall any statements of Mr. Wigand's on
2 the 60 Minutes show of that nature.

3 Q. Well you -- you know that he had made those
4 statements under oath; don't you?

5 A. I understand that's correct.

6 Q. And you know that Brown & Williamson has sued
7 him since he made those statements, correct?

8 MR. SCHNEIDER: Object to the form, outside
9 the scope.

10 A. I know that Mr. Wigand is being deposed at the
11 moment, but I'm not sure what the exact -- the exact
12 relationship of an adversarial nature is -- with Mr.
13 Wigand is at the moment.

14 Q. Well you understand that he was deposed for some
15 many days by Brown & Williamson's counsel after Brown
16 & Williamson sued him; correct?

17 A. Yes.

18 Q. And you know that in that deposition Brown &
19 Williamson asked him to prove whether documents from
20 his files -- let me start again.

21 And you know that in that deposition Brown &
22 Williamson's attorneys questioned him about whether
23 he could prove that files from his R&D files were
24 destroyed after he left the company after he was
25 fired in 1993; correct?

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1 A. I have not seen Dr. Wigand's deposition and I do
2 not know its contents.

3 Q. All right. But a portion of it was read to you;
4 wasn't it?

5 A. A portion of a deposition of Dr. Wigand was read
6 to me, that's correct.

7 Q. And you knew that in that portion of the
8 deposition he testified that documents from his files
9 at R&D at Brown & Williamson had been destroyed after
10 he was fired; correct?

11 A. I --

12 Yes.

13 Q. Sir, during the break we had, did you find out
14 why Brown & Williamson pulled the list of files from
15 J. Wigand destroyed document out of the Minnesota
16 depository?

17 MR. SCHNEIDER: Object to the form.

18 A. It's my understanding that you may not be
19 correct in your statement suggesting that we pulled
20 the documents. However, we will investigate and
21 establish the facts, and I will report back as soon
22 as I can on that.

23 Q. Well sir, I asked that I receive a copy of the
24 document and was told the document was no longer
25 there. But it is clear from the last entry date on

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1 Exhibit 63 that it was produced 12/31/96; correct?

2 MR. SCHNEIDER: Object to the form.

3 A. It's not clear to me. I'm not familiar with
4 these documents.

5 Q. All right. Well it does say "PRODDATE equal
6 12/31/96;" correct?

7 A. Help me find it on the document.

8 Q. The last entry on Exhibit 63, the bottom one.

9 A. On Exhibit 63. Sixty-four, okay. Beg your
10 pardon. Says "PRODDATE 12/31/96," that's correct.

11 Q. And you can offer no explanation about why that
12 document is no longer in the depository; is that
13 right?

14 MR. SCHNEIDER: Object to the form.

15 A. As I said, I -- we are investigating and will --
16 I will report back on this.

17 Q. Sir, isn't it true that Brown & Williamson
18 deliberately pulled the document entitled list of
19 "Files from J Wigand destroyed" from the Minnesota
20 depository because it purposefully destroyed original
21 smoking-and-health documents from Jeffery Wigand's
22 file and deliberately gave incomplete answers to
23 Exhibit 26?

24 MR. SCHNEIDER: Objection to the form,
25 misleading.

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1 A. I don't believe that's true.

2 Q. Sir, do you want the ladies and gentlemen of the
3 jury to believe that it was just a coincidence that,
4 according to this Minnesota document depository
5 document notation sheet, the box of documents
6 containing Bates number 682741479-483 was corrected
7 and taken out of the box labeled 1295 the day after
8 Brown & Williamson filed its responses that are now
9 marked as Exhibit 26?

10 MR. SCHNEIDER: Object to the form.

11 A. I do not know the circumstances surrounding this
12 Exhibit No. 64. I have said that we will investigate
13 and confirm the facts and respond to you when we have
14 those facts.

15 Q. Sir, isn't it true that when Martha Thomas was
16 interviewed by B&W's lawyers, she disclosed this
17 document destruction?

18 A. It is my --

19 MR. SCHNEIDER: Object to the form.

20 A. It is my understanding that Martha Thomas was
21 interviewed as part of the due diligence review of
22 preparing the interrogatory response, and I'm not
23 aware of the details of what Martha Thomas disclosed
24 in that. But we are investigating and will look for
25 the facts of that -- that issue.

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1 Q. Isn't it true that Martha Thomas disclosed the
2 fact that original smoking-and-health-related
3 documents created by Wigand were destroyed at the
4 time his files were destroyed, and that she disclosed
5 that fact when she was interviewed by King & Spalding
6 lawyers?

7 MR. SCHNEIDER: Object to the form.

8 A. I do not believe that Martha Thomas would have
9 disclosed that fact. But as I said, we will
10 establish the facts surrounding --

11 I know that -- that interviews and -- and
12 inquiry was made in this regard, and I will establish
13 the facts and respond when I have them.

14 Q. Sir, do you understand that the notes of those
15 interviews are in existence as we speak today?

16 MR. SCHNEIDER: Object to the form.

17 A. As I indicated earlier, I am aware that some
18 interview notes were prepared as part of doing the
19 due -- due diligence work for the interrogatory
20 response, and they are in the possession of outside
21 counsel. I don't know their nature or extent.

22 Q. These notes are in the possession of the same
23 outside counsel who prepared this interrogatory
24 response which just omits reference to the
25 destruction of Jeffery Wigand's files; correct?

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1 MR. SCHNEIDER: Object to the form.

2 A. I can respond that any interview notes prepared
3 by outside counsel during the course of the due
4 diligence are still in the possession of -- of
5 outside counsel, to my knowledge.

6 Q. And they're the same outside counsel that
7 prepared these interrogatory responses; correct?

8 A. That's correct.

9 MS. WIVELL: At this time I would request
10 specifically that steps be taken to preserve,
11 unchanged, all notes referring to interviews that we
12 have discussed in this deposition. Mr. Schneider,
13 will you agree to do that, until we can bring this
14 issue to the court?

15 MR. SCHNEIDER: I believe that we can agree
16 to preserve whatever we currently have on this
17 subject. I will have to make sure that I notify our
18 personnel of that, but I think we can do that.

19 MS. WIVELL: All right. I would also ask
20 that those documents be produced here tomorrow. Will
21 you ask one of the counsel that's with you to
22 immediately take steps to assure that those notes are
23 preserved?

24 MR. SCHNEIDER: Ms. Wivell, the materials
25 that you're referring to are notes, memos, materials

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1 that we generated during the course of our
2 work-product/attorney-client interviews and work with
3 respect to this interrogatory response. We do not
4 believe those materials are discoverable. We will
5 maintain those materials. And I can take two minutes
6 to call back and be sure that we -- I --

7 I have no reason to believe they would not be
8 preserved. I have every reason to believe they would
9 be. Just out of an abundance of caution.

10 MS. WIVELL: Well I was thinking perhaps,
11 since there are two or three here who represent Brown
12 & Williamson, that someone might just call and we can
13 go on.

14 MR. SCHNEIDER: I think that everybody
15 who's here at the deposition wants to participate.

16 MS. WIVELL: All right. Then let's take a
17 break.

18 THE REPORTER: Off the record, please.

19 (Recess taken.)

20 MS. WIVELL: Mr. Schneider, did you make
21 the call?

22 MR. SCHNEIDER: Yes, I made a call back to
23 my firm and asked that the materials, the notes and
24 memos that we have with respect to our investigation
25 with respect to the February 11, 1997 interrogatory

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1 that we have, that we will preserve those.

2 MS. WIVELL: Thank you. I appreciate it.

3 BY MS. WIVELL:

4 Q. Mr. Lowther, we've talked about Exhibit 26 and
5 some names that were not disclosed in response to
6 Interrogatory No. 1, some of those names being Earl
7 Kohnhorst and Robert Sachs, and I think there were
8 some others. Do you recall that?

9 A. Yes, I do.

10 Q. And we have talked about the fact that Exhibit
11 26 does not disclose the fact that files from Jeffery
12 Wigand's R&D department were -- were destroyed;
13 correct?

14 MR. SCHNEIDER: Object to the form.

15 A. It does not reference any specific instances
16 like that, correct.

17 Q. And it also does not disclose occasions when
18 Brown & Williamson sent original copies of reports
19 concerning smoking and health back to England;
20 correct?

21 MR. SCHNEIDER: Object to the form.

22 A. It is my understanding that, after due diligence
23 inquiry, Brown & Williamson has documented examples
24 and instances of circumstances where its only copy of
25 a document was destroyed or routed to third party,

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1 but that in conjunction with transferring documents
2 to B.A.T., none have been -- been found to have been
3 so transferred.

4 Q. And there are none mentioned in this
5 interrogatory answer; are there, sir?

6 A. That's correct.

7 Q. Now one of the people who was interviewed was
8 Robert Sanford; correct?

9 A. That's -- that's correct.

10 Q. Now Mr. Sanford was the Brown & Williamson
11 vice-president of research and development; wasn't
12 he?

13 A. I'm not aware of what his position was at Brown
14 & Williamson.

15 Q. Well you understood he was a vice-president,
16 though; didn't you?

17 A. I did not.

18 Q. All right. But he was a Brown & Williamson
19 employee; correct?

20 A. I believe that's correct.

21 Q. And I think you said earlier that Mr. Hughes was
22 Brown & Williamson chair and CEO; is that right?

23 A. Mr. I. Hughes was, I believe, our CEO, yes.

24 Q. And he's one of the people who wasn't
25 interviewed for these interrogatory answers; correct?

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1 A. It's my understanding that Mr. Hughes is
2 deceased.

3 Q. Now you understand that there was an employee by
4 the name of Wade who was a Brown & Williamson
5 employee at one time?

6 A. Please --

7 MR. SCHNEIDER: Object to the form.

8 A. Please repeat the question.

9 Q. There was an employee for Brown & Williamson by
10 the name of Wade who worked in R&D.

11 A. Is that a question?

12 Q. Yes.

13 A. I don't know of any individual by the name of
14 Wade who worked in R&D.

15 Q. Sir, isn't it true that Robert Sanford
16 participated in sending back original B.A.T. research
17 so that Brown & Williamson would no longer have
18 copies of that research in its file?

19 A. If you're referring to a specific incident
20 referenced in the interrogatory response, then can
21 you direct me to it and I may be able to answer your
22 question?

23 Q. Well sir, there aren't any specific instances of
24 documents which were sent back to England which were
25 listed in the interrogatory responses; are there?

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1 MR. SCHNEIDER: Object to the form.

2 A. Well the interrogatory response does reference
3 some circumstances where -- it does not reference
4 circumstances where documents were transferred to
5 England, that's correct.

6 Q. That happened; didn't it, sir?

7 A. I do not believe that it did.

8 Q. And what do you base that belief on?

9 A. Brown & Williamson undertook a due diligence
10 review, and in -- in compliance with the court order,
11 to interview individuals that had knowledge relating
12 to documents that were discovered in compliance with
13 the court order and has included in its interrogatory
14 response examples of circumstances where its only
15 copy of documents relating to smoking and health,
16 advertising, marketing and promotion, have been
17 destroyed or have been routed so as not to be
18 received in files, but nevertheless, Brown &
19 Williamson has not at any stage become aware of
20 circumstances where documents have been transferred
21 to affiliates for the purposes of avoiding discovery.

22 Q. Sir, do you think it would be odd if I found an
23 example of such a transfer and Brown & Williamson,
24 after its due diligence, couldn't?

25 MR. SCHNEIDER: Object to the form.

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1 A. It is my understanding that Brown & Williamson
2 undertook a good-faith and diligent effort to
3 establish the facts, and it is no -- there's no
4 guarantee that every circumstance where a document
5 might have possibly been destroyed, a relevant
6 document could have been destroyed and may not have
7 been discovered in the course of this -- this
8 process.

9 Q. Well sir, certainly, sir, you would agree that
10 if someone who was interviewed for this process had
11 been asked that question, they ought to remember
12 whether or not they actually did send off their only
13 copy so it could be destroyed. Wouldn't you think
14 they would remember that?

15 MR. SCHNEIDER: Object to the form.

16 A. It's --

17 My response is that human memory is very
18 fallable, and I can't comment on what people can
19 recall or not.

20 Q. Sir, isn't it a fact that Dr. -- I'm sorry, let
21 me begin again.

22 Isn't it a fact that Mr. Robert Sanford
23 participated in such a document destruction by
24 sending Brown & Williamson's copies of documents back
25 to London so they could be destroyed?

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1 MR. SCHNEIDER: Object to the form.

2 A. It's not my understanding that that is the case.

3 (Plaintiffs' Exhibit 65 was marked

4 for identification.)

5 BY MS. WIVELL:

6 Q. Sir, showing you what has been marked as

7 Plaintiffs' Exhibit 65, it is a BAT Co, Ltd. document

8 produced in the Minnesota litigation Bates numbered

9 105653423 through 626; correct?

10 MR. SCHNEIDER: I object to the form of the

11 question. And Ms. Wivell, this is not a document

12 that I believe you have designated on your list with

13 respect to documents of these kind that you haven't

14 designated. The witness is not prepared to respond,

15 and we would object to the question on that basis.

16 MS. WIVELL: Do you have the question in

17 mind?

18 MR. SVOBODA: Excuse me, Ms. Wivell. If

19 you're using one of our documents, we certainly are

20 unaware of it as well, and I'd like to see a copy of

21 it.

22 MS. WIVELL: I handed defense counsel two

23 copies.

24 MR. SVOBODA: I would like to see one of

25 those two copies first.

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1 MS. WIVELL: Let me repeat my question.

2 BY MS. WIVELL:

3 Q. Sir, showing you what has been marked as Exhibit
4 65, it is a BAT Co Ltd. document, Bates number
5 105653423 through 626; correct?

6 A. That is correct.

7 Q. Would you please turn to the second page of the
8 document and read what it says there for the record.

9 A. "All the Copies have been recalled back to G.R.
10 & D.C. and Destroyed by Dr. D.G. Felton. BAT Co Ltd,
11 Minnesota Tobacco Litigation."

12 Q. Now what do you understand G.R. & D.C. to be?

13 A. I understand that that is the research facility
14 in Southampton.

15 Q. Sir, would you please turn to page four of this
16 document. Do you have it?

17 A. I do.

18 Q. This is the cover page of the original report;
19 correct?

20 A. I have no knowledge of what this document is.

21 Q. All right. Well it says "INTERACTION OF SMOKE
22 AND THE SMOKER, PART 6: EEG STUDIES;" correct?

23 A. That's correct.

24 Q. Then it says "REPORT NO. RD 1374 RESTRICTED;"
25 right?

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- 1 A. That's correct.
- 2 Q. And it gives the date May 25th -- I'm sorry, May
3 27th, 1976; right?
- 4 A. Yes, it does.
- 5 Q. The author is A period Kay Comer, C-o-m-e-r;
6 right?
- 7 A. Yes.
- 8 Q. And it was issued by R period E period Thornton,
9 T-h-o-r-n-t-o-n; right?
- 10 A. That's correct.
- 11 Q. And do you see a report number on this
12 document? It's report number 1374; right?
- 13 A. Yes, it is, RD 1374.
- 14 Q. Now it shows a distribution list for people who
15 received this document on page four; correct?
- 16 A. Yes, it does.
- 17 Q. And among those listed are -- are I. W. Hughes;
18 right?
- 19 A. That's correct.
- 20 Q. That's the president and CEO of Brown &
21 Williamson; right?
- 22 A. Dr. Hughes was president and CEO at one time. I
23 don't -- don't know what his status was at -- at the
24 time of this document.
- 25 Q. Fair enough. But he was a Brown & Williamson

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1 employee; correct?

2 A. At one time, that's correct.

3 Q. And it also lists Dr. R. A. Sanford; correct?

4 A. That's correct.

5 Q. That is the Robert Sanford who's listed under

6 Interrogatory No. 1; right?

7 A. That's correct.

8 Q. Lists R. S. Wade; correct?

9 A. Yes, it does.

10 Q. And Mr. Wade was also a Brown & Williamson

11 employee; right?

12 A. I don't know that.

13 Q. Sir, isn't it true that this document was

14 recalled and all copies of it were removed from Brown

15 & Williamson's files and it was sent back to London

16 so that copies that Brown & Williamson had could be

17 destroyed?

18 MR. SCHNEIDER: Object to the form.

19 A. I don't know that. I don't believe that's the

20 case.

21 Q. Well we have read from the second page of the

22 document that all copies have been recalled back to

23 our G.R. & D.C. and destroyed by Dr. D period G

24 period Felton; correct?

25 MR. SCHNEIDER: I object again to the

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1 question, Ms. Wivell, and note that this is a
2 document that was not on your list to be identified.
3 The witness is not prepared to answer and said he
4 does not know.

5 MS. WIVELL: This is impeachment, Mr.
6 Schneider.

7 Do you have my question in mind?

8 A. Page two of this document says all copies have
9 been recalled back to G.R. & D.C. and destroyed by
10 Dr. D. G. Felton.

11 Q. Sir, if that indeed happened, you would expect
12 that there would not be any copies of this document
13 in Brown & Williamson's files; wouldn't you?

14 A. I do not know that.

15 Q. Well can you explain to me why, when I attempted
16 to find this document amongst those produced by Brown
17 & Williamson, I could not find it?

18 MR. SCHNEIDER: Object to the form.

19 A. I do not know the circumstances of this
20 document.

21 Q. Would you agree that Brown & Williamson has not
22 produced a copy of this document in the Minnesota
23 smoking-and-health litigation?

24 MR. SCHNEIDER: Object to the form.

25 A. I do not know whether Brown & Williamson has

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1 produced this document or not.

2 Q. Will you find out and report back to us
3 tomorrow?

4 A. I will.

5 Q. It certainly would be a document that, if it
6 were in Brown & Williamson's files, should have been
7 produced; don't you think?

8 A. It's my understanding that it may not have
9 necessarily been produced even if it were in Brown &
10 Williamson's files. It would have to be reviewed to
11 see whether it were responsive to the requirements of
12 the requests in this case.

13 Q. Well sir, you're familiar, having been the
14 deponent who was sent to talk to us about the
15 collection and production of responsive documents in
16 this case, you know darn well that a document
17 entitled "INTERACTION OF SMOKE AND THE SMOKER" would
18 have been a document that would have been responsive
19 and should have been produced were it in Brown &
20 Williamson's files; right?

21 MR. SCHNEIDER: Object to the form.

22 A. It's my understanding that some research or some
23 smoking-and-health documents, not all
24 smoking-and-health documents, were required to be
25 produced in this case. This document, had it been in

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1 Brown & Williamson files, may or may not have had to
2 be produced. One would have to look at the document
3 contents and requirements in order to make that
4 determination.

5 Q. One would have to look at the definition of
6 "responsive" that Brown & Williamson used in this
7 case; wouldn't they?

8 A. That's correct.

9 Q. But on the face of it, knowing what you know
10 about the plaintiffs' document requests in this case,
11 you would expect that this would be a responsive
12 document; wouldn't you?

13 A. I don't know that I can say that I have that
14 expectation.

15 Q. I just want, so we understand, so the ladies and
16 gentlemen of the jury will understand, it's your
17 testimony as Brown & Williamson's spokesperson in
18 this deposition, who was also Brown & Williamson's
19 spokesperson in the deposition we took about document
20 collection and -- and production in this case, that a
21 document entitled, and I quote, "INTERACTION OF SMOKE
22 AND THE SMOKER PART 6: EEG STUDIES, REPORT NO. RD
23 1374," you can't tell us whether that's a responsive
24 document?

25 MR. SCHNEIDER: Objection to the form.

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1 A. I cannot tell you it's a responsive document.

2 My understanding of a responsive document is that it

3 would be a document in Brown & Williamson's files

4 which relates to smoking and health, but not every

5 document relating to smoking and health would have to

6 be produced.

7 As to whether this specific document would have

8 to be produced or not, somebody would need to have a

9 look at it on its merits.

10 Q. Well let's take a look at it on its merits. Can

11 you turn to the page that's Bates numbered 429 that

12 is toward the front of the document.

13 A. I have that page.

14 Q. Do you see where where it says "SUMMARY?"

15 A. Yes, I do.

16 Q. And the very first sentence tells us what this

17 document is about; doesn't it?

18 A. I don't know that it tells us what this document

19 is about.

20 Q. Well it says, "This interim report describes

21 progress made in the analysis of results obtained

22 from a series of experiments designed to investigate

23 the long term effects of smoking." Did I read that

24 correctly?

25 A. I believe you did.

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1 Q. And then it goes on to talk about electrical
2 activity in the brain being measured for various
3 groups of smokers and non-smokers; correct?

4 A. Yes.

5 Q. So based on what you've read here, do you think
6 that this would be a responsive document that, if it
7 were in Brown & Williamson's files, should have been
8 produced to the plaintiffs in this litigation?

9 A. It's my belief that an attorney would -- if it
10 were in Brown & Williamson's files -- would have
11 reviewed this document to determine whether it's
12 responsive, and if it had been identified as
13 responsive, it would have been produced.

14 Q. Well sir, let's turn to page 433 and see if you
15 can come to a conclusion based on what's there.

16 A. My response is that I am not an attorney, I'm
17 not qualified to make a determination as to whether
18 this document is responsive.

19 If you're asking me to establish its
20 responsiveness, then I can have somebody review it
21 and -- and -- and report back to you.

22 Q. Well, Mr. Lowther, you didn't leave your good
23 sense at the door when you came in today. Don't you
24 think -- and I'm not asking you to bind Brown &
25 Williamson with this answer, but just on the face of

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1 what you've seen here, don't you think that this
2 document probably would have been responsive to
3 plaintiffs' document requests and should have been
4 produced if Brown & Williamson had it in its files?

5 MR. SCHNEIDER: Object to the form.

6 A. As I said earlier, I think there are some
7 categories of smoking-and-health documents which were
8 not required to be produced, and I don't know whether
9 this is such a case or not.

10 Q. So you just can't sit here and tell us whether
11 you think this might be a responsive document or not;
12 is that your testimony?

13 A. I can speculate, but I don't think it's -- it's
14 helpful for me to do that.

15 Q. You don't think comparison of physiological
16 aspects of smokers and non-smokers might be a
17 document that would be responsive to plaintiffs'
18 broad requests for smoking-and-health-related
19 documents in this case?

20 MR. SCHNEIDER: Object to the form.

21 A. As I said, it -- it might be responsive if it
22 were in Brown & Williamson's files. On the other
23 hand, it may not be. I'm not qualified to make that
24 judgment. I have not reviewed the document. I'm not
25 in any position to indicate whether it is or it is

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1 not.

2 Q. But you're going to find out and tell us
3 tomorrow whether this document is in Brown &
4 Williamson's files; right?

5 MR. SCHNEIDER: Yes. I --

6 Objection. I believe he said he would do that.

7 A. Yes, I'll do that.

8 Q. Because if this document is not in Brown &
9 Williamson's files and if indeed Dr. Sanford and the
10 others who received copies of it sent it back to
11 England, it should have been listed in Brown &
12 Williamson's interrogatory responses which are
13 Exhibit 26; correct?

14 MR. SCHNEIDER: Objection to the form.

15 A. Please repeat the question.

16 Q. Certainly.

17 If this is a document which is not in Brown &
18 Williamson's files and if indeed Mr. Sanford and the
19 others who received copies of it, including Mr.
20 Hughes, the president and CEO, sent it back to
21 England, this is a transfer for the purposes of
22 destruction which should have been listed in Exhibit
23 26; isn't that correct?

24 MR. SCHNEIDER: Object to the form.

25 A. If indeed it were the only copy of Brown &

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1 Williamson's -- of a Brown & Williamson document
2 which were transferred to Brown & Williamson -- to an
3 affiliate company for purposes of destruction, and
4 Brown & Williamson was aware of that, then it would
5 have been reported.

6 Q. Sir, you just said "if it were a Brown &
7 Williamson document." Did Brown & Williamson
8 interpret plaintiffs' requests to exclude documents
9 that it received from B.A.T., BAT Co, BATUKE?

10 A. No, I don't believe it did.

11 Q. So you would agree, sir, that if this document
12 had been in Brown & Williamson's files, it should
13 have been -- I'm sorry, let me start again.

14 You would agree, sir, that if this document had
15 been returned to London for destruction, it should
16 have been listed on Brown & Williamson's Exhibit 26;
17 right?

18 MR. SCHNEIDER: Object to the form, asked
19 and answered.

20 A. My understanding is Brown & Williamson does not
21 have knowledge of a document -- this document having
22 been transferred to B.A.T. for destruction purposes.

23 Q. Did anyone ask Dr. Sanford if that were the
24 case?

25 A. I do not know.

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1 Q. Nobody shared that information with you when --
2 oh, strike that.

3 When you were preparing for your deposition, did
4 anyone share with you what Dr. Sanford had said about
5 document destruction or transfer?

6 A. No, they did not.

7 Q. Do you have any information as you sit here
8 today that copies of this document were not sent back
9 to England and destroyed?

10 A. I've not seen this document before and I have no
11 information on it.

12 Q. So the answer to my question is no, you don't
13 have any information contrary to what is stated on
14 the second page of this document; right?

15 A. I do not.

16 Q. Sir, this document is not the only Brown &
17 Williamson document that was sent back to London for
18 destruction; was it?

19 MR. SCHNEIDER: Object to the form.

20 A. I'm not aware of -- of documents that have been
21 sent back to B.A.T. for destruction.

22 Q. Isn't it true that not only were documents sent
23 back to London for destruction -- no, let me strike
24 that.

25 Isn't it true that not only were documents sent

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1 back to England for destruction, but also references
2 to their existence were deleted from the computer
3 systems to which Brown & Williamson had access?

4 MR. SCHNEIDER: Object to the form.

5 A. That is not my understanding. If you're
6 referring to a specific instance in the
7 interrogatory, if you could point me to it, and
8 perhaps I can tell you about the facts that I have
9 relating to that instance.

10 Q. Well sir, there are no references in the
11 interrogatory to portions of computer systems being
12 deleted because documents were sent back to London
13 for destruction; are there?

14 MR. SCHNEIDER: Object to the form.

15 A. I can respond that there is an instance related
16 where documents were removed from the R&D library for
17 storage, and the database that records documents
18 retained in the library was amended to record that
19 fact, and that is outlined in the interrogatory
20 response.

21 Q. But I'm talking about the INTERBAT database.
22 You're familiar with that database; aren't you?

23 A. I'm aware that there is an INTERBAT database,
24 that's correct.

25 Q. And isn't it true that documents were taken from

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1 Brown & Williamson's files, sent back to London for
2 destruction, and there -- and reference removed from
3 the INTERBAT document -- or computer system relating
4 to those documents?

5 A. I'm not aware --

6 MR. SCHNEIDER: Object to the form.

7 A. I'm not aware of such an instance.

8 Q. You're aware of no deletions from the INTERBAT
9 database of references to documents that were sent
10 back to -- to England for destruction; is that right?

11 MR. SCHNEIDER: Object to the form.

12 A. That's correct.

13 MS. WIVELL: Jerry.

14 MR. SVOBODA: B.A.T. document?

15 MS. WIVELL: Yes.

16 (Plaintiffs' Exhibit 66 was marked
17 for identification.)

18 BY MS. WIVELL:

19 Q. Sir, showing you what's been marked as
20 Plaintiffs' Exhibit 66, would you take a moment to
21 review this document?

22 MR. SCHNEIDER: Object to the form. Again,
23 this was not a document designated prior to the
24 deposition. These are documents from BAT Co's file.
25 B&W didn't review documents from BAT Co's files for

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- 1 purposes of this interrogatory response, and we
2 object to the question.
- 3 A. I have read the document.
- 4 Q. Sir, this is a document concerning report number
5 RD 1376 restricted; correct?
- 6 A. That's correct.
- 7 Q. It is a BAT Co Ltd. document Bates numbered
8 101466776; correct?
- 9 A. Yes, it is.
- 10 Q. Dated December 5th, 1980; is that right?
- 11 A. Yes, it is.
- 12 Q. It's from S period R period Evelyn. Am I
13 pronouncing that correctly?
- 14 A. It seems reasonable to me. I don't know how it
15 should be pronounced.
- 16 Q. Have you ever seen this document before, sir?
- 17 A. No, I have not.
- 18 Q. Were you aware of its contents before I showed
19 it to you today?
- 20 A. No, I was not.
- 21 Q. So in your preparation to come here to be Brown
22 & Williamson's spokesperson, no one disclosed the
23 information that's contained in this document;
24 correct?
- 25 A. Not to me, that's correct.

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1 Q. Now this document says, "Enclosed are copy
2 numbers 2 through 13 inclusive of the above report."

3 Have I read it correctly so far?

4 A. Yes, you have.

5 Q. Then it says, quote, "These should be destroyed
6 and your records amended accordingly." Correct?

7 A. That's correct.

8 Q. And then the second paragraph goes on to say,
9 "By copy of this memo I am asking Dr. Lewis to
10 ensure that the record on INTERBAT is also deleted
11 and I am also advising Mr. Hughes of the position."
12 Correct?

13 A. That's correct.

14 Q. Do you understand this Mr. Hughes was the
15 president and CEO of Brown & Williamson?

16 MR. SCHNEIDER: Objection to the form.

17 A. I do not know that this is the same Dr. Hughes
18 since the cc note here says Dr. D. M. Hughes and the
19 Brown & Williamson Hughes that I'm aware of is Mr. I.
20 W. Hughes.

21 Q. All right. But there is reference to deletion
22 of the record from INTERBAT; right?

23 A. That's correct.

24 Q. And INTERBAT was a computer system that Brown &
25 Williamson had access to that was set up for all

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1 B.A.T. companies; correct?

2 A. It's my understanding that Brown & Williamson
3 had access to INTERBAT from time to time to some
4 limited degree, yes.

5 Q. And it was a computer database that was set up
6 for access to B.A.T. companies; correct?

7 MR. SCHNEIDER: Objection to the form.

8 Q. Members of the BAT Group; right?

9 A. I believe that's correct.

10 Q. Now it also goes on to say here, "Arrangements
11 are being made to recover Copy No. 1 from Millbank so
12 that it can also be sent to you for destruction."
13 Correct?

14 A. That's what it says.

15 Q. This document would suggest, wouldn't it, that
16 documents were sent to England to be destroyed?

17 A. I don't know that it suggests that.

18 Q. Well certainly something is going to be
19 destroyed here, and all reference to it on INTERBAT
20 is going to be deleted; correct?

21 A. That's correct.

22 Q. Do you know what RD number 1376 is?

23 A. I do not.

24 Q. Do you know if it is -- it -- I'm sorry.

25 Do you know if it exists in Brown -- Brown &

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1 Williamson's files today?

2 A. I do not.

3 Q. Do you know if the record on INTERBAT was

4 deleted, as it says in this memo?

5 A. I do not have any knowledge.

6 Q. This just wasn't something that anybody told you

7 about when you were getting ready for your deposition

8 today; correct?

9 A. I've not seen this document before. I don't

10 know the circumstances surrounding it.

11 Q. Sir, I'd like you to turn to a different portion

12 of interrogatory -- the interrogatory which has been

13 marked as Exhibit 26. Would you turn to page four,

14 please.

15 A. I have it.

16 Q. There are several bullet points; correct?

17 A. There are.

18 Q. The third one of those bullet points says, "B&W

19 has had a consistent policy of complying with its

20 discovery obligations." Right?

21 A. That's correct.

22 Q. Now we discussed a bit earlier today, that Brown

23 & Williamson has had tobacco cases filed against it,

24 legal cases, continuously since 1954; isn't that

25 right?

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1 MR. SCHNEIDER: Object to the form.

2 A. It is my understanding that over that period of
3 time there have been cases that have been pending,
4 but it does not necessarily mean that on an
5 uninterrupted, continuous basis Brown & Williamson
6 has had such cases pending since that time.

7 Q. Well sir, is it Brown & Williamson's contention
8 that it has always complied with its discovery
9 obligations, as it states here?

10 MR. SCHNEIDER: Objection to the form.

11 A. As it states there, it is my understanding that
12 Brown & Williamson has always made every good effort
13 and has made its employees aware of the requirements
14 of discovery obligations and has taken steps to
15 ensure that compliance is generally adopted.

16 Q. All right. Well you know that, typically in
17 product-liability cases, that when someone is sued,
18 document requests are made as a result after the suit
19 is commenced; right?

20 A. I believe that's correct.

21 Q. And in fact that occurred in the cases that
22 Brown & Williamson lists in that list that's attached
23 to Susan Saunders' affidavit; right?

24 MR. SCHNEIDER: Object to the form, asked
25 and answered.

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1 A. I do not know the scope of any discovery
2 obligations that Brown & Williamson may have had from
3 time to time during past years.

4 Q. Well you would agree that from 1954 on, Brown &
5 Williamson could reasonably expect that it would be
6 asked for smoking-and-health-related documents;
7 right?

8 A. Well it's my understanding that while cases were
9 pending, Brown & Williamson's policy was one of
10 complying with discovery obligations, but I don't
11 think it's right to say that throughout the whole
12 period there were discovery obligations in existence.

13 Q. Well sir, my question was a little bit
14 different. You would agree that from 1954 on, Brown
15 & Williamson could reasonably expect it would be
16 asked for smoking-and-health-related documents;
17 correct?

18 A. Yes, that's correct.

19 Q. And in fact in a case that's listed on Exhibit
20 61, the list that's attached to Susan Saunders'
21 affidavit, there is a case called Dewey on -- listed
22 on page two; correct?

23 A. I'm -- I'm aware of the Dewey case to some
24 degree.

25 Q. And according to Susan Saunders' affidavit, that

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1 case was filed on August 20th, 1982; correct?

2 MR. SCHNEIDER: Object to the form. Let --
3 please allow the witness to find the affidavit.

4 THE WITNESS: I'm sorry. Could you repeat
5 your question?

6 MS. WIVELL: Certainly. I'm sorry, sir, I
7 didn't mean to begin you -- without you having it in
8 front of you.

9 Q. According to Susan Saunders' affidavit, the
10 Dewey case was filed on August 20th, 1982; correct?

11 A. That's correct.

12 Q. Now isn't it true that from 1954 to 1982 when
13 the Dewey case was filed, Brown & Williamson had not
14 produced a single document from its files relating to
15 smoking and health in any of the cases that are
16 listed on this affidavit?

17 MR. SCHNEIDER: Object to the form, beyond
18 the scope.

19 A. I cannot confirm that. I am generally aware
20 that in early litigation Brown & Williamson may not
21 have been a primary focus of plaintiffs' inquiries.
22 I believe that when it was, objections were made, and
23 in many cases there was no requirement to produce
24 documents at some of those early cases. I do know
25 that some documents were produced in the Dewey case.

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1 MS. WIVELL: Move to strike as non-
2 responsive.

3 Q. Isn't it true, sir, that from 1954 to 1982 when
4 the Dewey case was filed, Brown & Williamson had not
5 produced a single document from its files relating to
6 smoking and health in any of the cases that are
7 listed on this affidavit?

8 MR. SCHNEIDER: Objection to the form,
9 asked and answered, outside the scope, argumentative,
10 misleading.

11 A. I do not know.

12 Q. Sir, when you talked to Mr. Wells, did you ask
13 him about the scope of production in other cases?

14 A. I don't believe I did.

15 Q. Well sir, you knew that you were going to be
16 coming here today to talk about Brown & Williamson's
17 response concerning Exhibit 26; right?

18 A. That's correct.

19 Q. And part of that response is the assertion that
20 Brown & Williamson has a consistent policy of
21 complying with its discovery obligations; correct?

22 A. That is correct.

23 Q. All right. So you knew that reasonably there
24 might be a possibility that I would be asking about
25 what Brown & Williamson did to form the basis for

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1 that assertion.

2 MR. SCHNEIDER: Objection to form.

3 A. I can tell you the facts that I have. It is my
4 understanding that from time to time during pending
5 litigation, notices have been served within the
6 company to advise employees to hold documents pending
7 litigation. In -- in 1990 our policy of holding
8 documents was formalized, and an element of that
9 policy included an express reference to the
10 requirement to hold documents for smoking-and-health
11 litigation.

12 Q. So you're telling us that before 1990 there
13 wasn't any policy in place at Brown & Williamson to
14 make sure that it held on to all the important
15 smoking-and-health documents that were in its files;
16 right?

17 MR. SCHNEIDER: Object to the form.

18 A. It is my understanding that prior to 1990,
19 although a formal document-retention policy had not
20 been put into place, Brown & Williamson did take
21 steps to advise employees of their responsibilities,
22 and indeed large numbers of documents from those
23 periods have been retained and indeed have been
24 produced in this case.

25 Q. Well let me go back to my question about Dewey.

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1 Isn't it true that up until the time Brown &
2 Williamson produced documents in the Dewey case, that
3 Brown & Williamson had not produced a single sheet of
4 paper out of its files relating to smoking and health
5 in any case between 1954 and to the time the document
6 production was made in Dewey?

7 MR. SCHNEIDER: Object --

8 Q. Isn't that true?

9 MR. SCHNEIDER: Object to the form,
10 misleading.

11 A. I don't know that that is true.

12 Q. Sir, Mr. Kendall -- Kendrick Wells has been
13 responsible, since he joined Brown & Williamson up to
14 the last couple of years, for every document
15 production that Brown & Williamson has made in a
16 product-liability suit; right?

17 A. I don't know that.

18 MR. SCHNEIDER: Object to the form.

19 Q. Well you would expect that Mr. Wells would be
20 able to tell us whether or not Brown & Williamson had
21 produced a single sheet of paper from the time it was
22 first sued in 1954 up until the time it produced
23 documents in Dewey. You would expect him to know the
24 answer to that question; wouldn't you?

25 MR. SCHNEIDER: Object to the form.

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1 A. Mr. Wells may know the answer.

2 (Plaintiffs' Exhibit 67 was marked
3 for identification.)

4 BY MS. WIVELL:

5 Q. Sir, showing you what's been marked as
6 Plaintiffs' Exhibit 67, it's a portion of Kendrick
7 Wells' deposition. And I'm afraid I can't tell you
8 what case because, unfortunately, when Mr. Schneider
9 produced the transcript to me, I didn't get the cover
10 page. So -- but I do know it's Bates number, the two
11 pages that I've given you, 689302856 through 57. Do
12 you see that, sir?

13 MR. SCHNEIDER: I believe this deposition
14 was taken in the Butler case, Ms. Wivell.

15 MS. WIVELL: Thank you, Mr. Schneider.

16 Q. Have I identified the page numbers correctly,
17 sir?

18 A. Yes, you have.

19 Q. And we know from looking at the top of the
20 deposition -- or at the top of pages, this is a
21 portion of the deposition of J. Kendrick Wells, III;
22 correct?

23 A. I'll make that assumption.

24 Q. All right.

25 A. I don't know that.

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1 Q. Would you please read to yourself lines 22 on
2 the first page through line nine of the second page.

3 A. I have read it.

4 Q. Sir, there Mr. Wells says that it -- that the
5 Dewey case is the only case involving smoking and
6 health in which Brown & Williamson turned over
7 documents before April 1995; correct?

8 MR. SCHNEIDER: Object to the form,
9 misreading the transcript.

10 A. It's my understanding that Mr. Wells was
11 indicating his understanding related to individual
12 smoking-and-health cases only.

13 Q. That -- that's correct. And the cases which are
14 listed in Ms. Saunders' affidavit are individual
15 smoking-and-health cases; correct?

16 MR. SCHNEIDER: Object to the form,
17 misleading.

18 A. No, I don't believe that is correct.

19 Q. What other cases have -- are included in the
20 exhibit which she includes as Exhibit A to her
21 affidavit?

22 A. I believe there are some class-action cases
23 included.

24 Q. Sir, would you turn to the top of the page of
25 Ms. Saunders' affidavit which is 651965115.

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1 A. I have done so.

2 Q. What does it say at the top of the page?

3 A. "SMOKING AND HEALTH CASES FILED AGAINST BROWN &
4 WILLIAMSON TOBACCO CORPORATION."

5 Q. "March 1954 Through December 31st, 1994;"
6 correct?

7 A. That's correct.

8 Q. And isn't it true, sir, that in the
9 smoking-and-health-related cases before April of
10 1995 -- let me rephrase it.

11 Isn't it true, sir, that in individual
12 smoking-and-health cases before April of 1995, the
13 only case that Brown & Williamson had ever turned
14 over any documents was in Dewey?

15 MR. SCHNEIDER: Objection to the form,
16 outside the scope.

17 A. I don't know that.

18 Q. Wasn't that what Mr. Wells is saying in this
19 portion of the testimony we've had marked as Exhibit
20 67?

21 A. I can tell you that Mr. Wells' testimony appears
22 to be that, according to his recollection, it's the
23 only case where documents were handed over to
24 plaintiffs' lawyer in an individual
25 smoking-and-health case prior to the date of April

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1 1995.

2 Q. Sir, isn't it true that the only case from 1954
3 till April of 1995 involving individuals and smoking
4 and health in which Brown & Williamson produced a
5 single document was the Dewey case?

6 MR. SCHNEIDER: Object to the form.

7 A. Can you repeat the question, please?

8 Q. Certainly.

9 Isn't it true that the only individual
10 smoking-and-health-related case that Brown &
11 Williamson ever produced documents in from 1954 until
12 April of 1995 was the Dewey case?

13 A. I don't know that.

14 Q. Will you find that out and report back?

15 A. Yes, I'll do so.

16 Q. You're going to ask Mr. Wells; aren't you?

17 A. I'll start by asking my outside counsel.

18 Q. Sir, isn't it true that there were only
19 approximately 1350 documents turned over to the
20 plaintiffs in the -- in the Dewey case by Brown &
21 Williamson?

22 A. I believe that's approximately correct.

23 Q. And sir, isn't it true that the plaintiffs'
24 document requests in Dewey were as sweeping as the
25 plaintiffs' document requests in this case?

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1 MR. SCHNEIDER: Object to the form.

2 A. I have not prepared myself for the -- to be able
3 to answer the nature of the requirements in the Dewey
4 case.

5 Q. Well sir, you -- you knew that I had listed the
6 Brown & Williamson's response to the Dewey document
7 requests in both document designations for the last
8 two depositions; isn't that true?

9 A. I do understand that there was a request to
10 produce the documents produced in the Dewey case to
11 the depository.

12 Q. And those approximately 1350 pages --

13 And it is pages, isn't it? It's not 1350
14 documents, it's 1350 pages were produced in Dewey;
15 right?

16 A. I believe it's approximately of that number,
17 yes.

18 Q. And you have reviewed the Brown & Williamson
19 response to plaintiffs' request for production in
20 Dewey?

21 MR. SCHNEIDER: Object to the form.

22 A. I don't believe that I have.

23 Q. Ah. Well let me solve that.

24 (Plaintiffs' Exhibit 68 was marked
25 for identification.)

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1 BY MS. WIVELL:

2 Q. Sir, showing you what's been marked as
3 Plaintiffs' Exhibit 68, am I correct that this is the
4 response of defendant Brown & Williamson to
5 plaintiffs' request for production of documents in
6 the Dewey case?

7 A. I believe it is.

8 Q. All right. Why don't we take a few moments off
9 the record while you take a look at the requests that
10 the plaintiffs made for production of documents in
11 this case.

12 THE REPORTER: Off the record, please.

13 (Discussion off the record.)

14 BY MS. WIVELL:

15 Q. Sir, you've had the opportunity during the --
16 let me start again.

17 You've had the opportunity during the break to
18 look at Exhibit 68; is that right?

19 A. Yes, I have.

20 Q. And if you turn to page four, you see a request
21 there for documents that discuss or comment on
22 research performed by or at the request -- at the
23 request of Brown & Williamson concerning claims that
24 cigarette smoke cause human disease, including but
25 not limited to lung cancer, heart disease, emphysema,

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1 dated between January 1st, 1953 and December 31st,
2 1979; right?

3 A. It does say that.

4 Q. Yes. And if you look on page six at requests
5 six and seven, that asks for any and all documents
6 that discuss or comment in any way on claims that
7 cigarette smoke produces addiction or dependence;
8 right?

9 A. Request number eight does indicate that.

10 Q. And request number seven concerns studies and
11 investigations performed by B&W or at its request
12 concerning claims that cigarette smoke produces
13 addiction or dependence; right?

14 A. It does say that, yes.

15 Q. And in fact if we go on to number nine, that
16 also asks for any document covering the subject of
17 research performed concerning addiction or dependence
18 in cigarette smokers; right?

19 A. Yes, it does.

20 Q. Sir, it's your understanding that in response to
21 these requests, Brown & Williamson produced a total
22 of 1350 pages of documents; right?

23 MR. SCHNEIDER: Objection to the form,
24 misleading.

25 A. It is my understanding -- and I've had the

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1 opportunity to make some inquiries into this, this
2 case -- that at some stage after -- after this
3 document was produced in March 1986, there was a
4 period where the case was stayed, and at a later date
5 I understand that the case has -- has run out or
6 whatever, but thirteen hundred odd documents were
7 produced at that time.

8 Q. And only 1350 approximate pages were ever
9 produced in Dewey; correct?

10 A. That is my understanding.

11 Q. Now at the same time, if we look at Ms.
12 Saunders' affidavit, at the same time that Dewey was
13 ongoing, Brown & Williamson also had suits relating
14 to smoking and health filed against it in Texas;
15 right?

16 A. It is my understanding that Brown & Williamson
17 for some of those suits in Texas did make documents
18 available to plaintiffs, but it is my understanding
19 that plaintiffs may not have availed themselves of
20 that -- of that -- that opportunity.

21 Q. Sir, isn't it true that in the Texas litigation,
22 no plaintiffs received documents?

23 A. As I just said, it is my understanding that
24 documents were made available in some of the Texas
25 cases, but they were not produced because that was

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1 not necessary. It was -- it was --

2 The offer was made to plaintiffs that the
3 documents are available, should you wish to review
4 them.

5 Q. But Brown & Williamson actually did not give a
6 single document to the plaintiffs in the Texas
7 litigation; right?

8 MR. SCHNEIDER: Object to the form.

9 A. It's my understanding that Brown & Williamson
10 made documents available to plaintiffs in the Texas
11 cases.

12 Q. But sir, my question was: Brown & Williamson
13 did not give a single document and plaintiffs
14 received not a single document from Brown &
15 Williamson's files in the Texas litigation; correct?

16 MR. SCHNEIDER: Object to the form.

17 A. I believe that's correct.

18 Q. At the time that Dewey was filed, other cases
19 were filed against Brown & Williamson in the state of
20 New Jersey; right?

21 A. I've not prepared myself to respond on all of
22 the -- the history of -- of cases brought against
23 Brown & Williamson over the years.

24 Q. All right. Well let's take a look at
25 Plaintiffs' Exhibit 61 and the schedule of cases that

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1 Ms. Saunders provided.

2 (Discussion off the stenographic record.)

3 Q. Do you have it, sir?

4 A. I do.

5 Q. Could you turn to page two of the schedule of
6 cases.

7 A. I've done so.

8 Q. All right. At the same time that Dewey was
9 filed, approximately in the early '80s, other cases
10 were filed against Brown & Williamson; isn't that
11 true?

12 A. I can see several cases filed in the early '80s,
13 yes.

14 Q. And several of those cases were filed in New
15 Jersey; right?

16 A. Several were.

17 Q. At the same time, did Brown & Williamson become
18 aware of a case called Cippilone which was filed in
19 New Jersey?

20 A. I have some awareness of the Cippilone case,
21 yes. I don't know where it was filed.

22 Q. All right. You understood that the Cippilone
23 case was filed at approximately the same time as
24 these other cases were filed in New Jersey; right?

25 A. I don't know when they were -- when it was

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1 filed.

2 Q. All right. Well you -- you knew it was a New
3 Jersey case; didn't you?

4 A. I did not know that.

5 Q. All right. Well you understood that Brown &
6 Williamson became aware that plaintiffs in Dewey and
7 cases like Cippilone were making demands for
8 production of documents in Brown & Williamson's
9 files; right?

10 A. It is my understanding that that does happen in
11 cases of this nature, yes.

12 Q. Well, and you understood that it did happen in
13 Dewey; correct?

14 A. Yes.

15 MR. SCHNEIDER: Object to the form.

16 A. Yes. Yes, I do.

17 Q. And sir, isn't it true that Brown & Williamson
18 personnel met with personnel from various B.A.T.
19 groups to discuss methods by which Brown &
20 Williamson's files could be protected so that
21 documents would not be produced to plaintiffs?

22 MR. SCHNEIDER: Object to the form.

23 A. I'm not aware of such a meeting.

24 Q. Sir, isn't it true that Brown & Williamson and
25 members from various of the BAT Group companies met

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1 to discuss ways to try and protect materials that
2 Brown & Williamson -- I'm sorry, let me start again.

3 Isn't it true that representatives of Brown &
4 Williamson and various BAT Group companies met to
5 discuss ways to try and protect documents which Brown
6 & Williamson had received from various BAT Group
7 members from production in civil litigation in the
8 United States?

9 MR. SCHNEIDER: Object to the form, outside
10 the scope. He's not been prepared on this topic, he
11 does not have knowledge of it.

12 A. I'm not aware of such a meeting.

13 Q. Sir, isn't it true that Brown & Williamson
14 personnel took steps to try and move documents to
15 different port -- parts of Brown & Williamson so that
16 those documents would not be produced in civil
17 litigation to the plaintiffs during the cases that
18 we've been talking about which were filed in the
19 early to mid-'80s?

20 MR. SCHNEIDER: Object to the form, outside
21 the scope. The witness doesn't know whether it
22 happened or didn't. He's not prepared on it.

23 MS. WIVELL: Mr. Schneider, you may
24 object. I don't like -- and I object to your
25 speaking objections.

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1 A. It is not my understanding that Brown &
2 Williamson has moved documents to Brown & Williamson
3 for the purposes of avoiding discovery, nor does it
4 make sense for that to have been done.

5 Q. Well sir, isn't it true that documents were
6 moved around in Brown & Williamson so that access to
7 those documents were limited and those documents
8 would be protected from production in civil
9 litigation cases involving smoking and health?

10 MR. SCHNEIDER: Objection, outside the
11 scope.

12 A. I'm not aware of any such event or circumstance
13 such as you describe.

14 MR. SCHNEIDER: Before you pose another
15 question, Ms. Wivell, may I ask for a momentary
16 conference with Mr. Lowther to avoid confusion?

17 MS. WIVELL: Fine.

18 THE REPORTER: Off the record, please.

19 (Discussion off the record.)

20 BY MS. WIVELL:

21 Q. Sir, isn't it true that Brown & Williamson
22 representatives met with representatives of other BAT
23 Group companies in 1984 to discuss methods to prevent
24 documents from falling into the hands of plaintiffs'
25 lawyers in the United States?

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1 MR. SCHNEIDER: Objection, outside the
2 scope.

3 A. I do not know that that happened.

4 (Plaintiffs' Exhibit 69 was marked
5 for identification.)

6 MS. WIVELL: Why don't we go off the record
7 while you read it.

8 THE REPORTER: Off the record, please.
9 (Discussion off the record.)

10 MR. SCHNEIDER: Let me ask you to pose a
11 question. I don't think you have a question pending.
12 BY MS. WIVELL:

13 Q. Sir, isn't it true that Brown & Williamson
14 representatives met with representatives of other BAT
15 Group companies in 1984 to discuss methods to prevent
16 documents in Brown & Williamson's possession from
17 falling into the hands of plaintiffs' lawyers in the
18 United States?

19 MR. SCHNEIDER: Objection, outside the
20 scope, and Exhibit 69 is not a designated exhibit.

21 A. I -- I do not know whether that is true. This
22 document does not indicate that such a -- such an
23 event, as you characterize it, happened.

24 Q. All right. This document for the record is a
25 BAT Co document, Bates numbered 109870737; correct?

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1 A. That's correct.

2 Q. It concerns a group legal conference held in
3 1984; right?

4 A. Yes, it does.

5 Q. It refers to a meeting of 28 senior lawyers from
6 group companies around the world held at Chelwood
7 from August 5th to August 8th of 1984; correct?

8 A. That's correct.

9 Q. Now if you look down at point B under the
10 discussion of objectives of the conference, it says
11 "To inculcate the concept of preventative legal
12 policies and actions as the key contribution of
13 in-house lawyers in the modern legal environment."
14 Correct?

15 A. Yes, it does.

16 Q. Sir, do you understand that that is
17 euphemistically referring to preventing plaintiffs'
18 lawyers from obtaining documents either in Brown &
19 Williamson's possession or which were typically sent
20 to Brown & Williamson by various group companies?

21 MR. SCHNEIDER: Object to the form.

22 A. No, I --

23 No, I do not understand it to indicate that.

24 Q. What do you understand the concept of
25 "preventative legal policies" to mean, sir?

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1 A. Well I did not write this document so I have no
2 way of being able to tell you what was meant by it at
3 the time. I can speculate that it may have been
4 efforts which every business enters into through the
5 use of in-house counsel to ensure that the company
6 complies with the law and -- and does not contravene
7 it, and it's simply a matter of taking appropriate
8 steps in advance of taking actions to ensure that you
9 are in compliance.

10 Q. Sir, well isn't it true that shortly after this
11 conference, BAT Co took steps to try and limit the
12 communications that it sent to Brown & Williamson to
13 try and prevent communications from falling into the
14 hands of plaintiffs' lawyers?

15 MR. SCHNEIDER: Object to the form.

16 A. Could you please repeat the question?

17 Q. Certainly, sir.

18 Isn't it true that shortly after this
19 conference, BAT Co took steps to try and limit the
20 communications and information it was sending to
21 Brown & Williamson so that, for example, R&D reports
22 would not fall into the hands of plaintiffs'
23 lawyers?

24 MR. SCHNEIDER: Object to the form.

25 A. I do not know whether BAT Co took steps like

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1 that.

2 Q. Sir, isn't it true that shortly after this group
3 legal conference in 1994, BAT Co took steps to assure
4 that no contentious material was sent to Brown &
5 Williamson?

6 MR. SCHNEIDER: Object to the form.

7 A. I don't know that BAT Co took steps after this
8 conference along the lines that you mentioned in
9 1984.

10 Q. Sir, isn't it true that after this conference in
11 1984, BAT Co took steps to assure that all sensitive
12 material be routed so that it not include B&W on the
13 distribution list?

14 MR. SCHNEIDER: Objection to the form.

15 A. If you're referring to a period in early 1995
16 when for a period of time research reports were
17 routed to a member of outside counsel for legal
18 advice which is as described in our interrogatory
19 response, then I can indicate that -- that to the
20 best of our knowledge that -- that sort of event did
21 occur --

22 MR. SCHNEIDER: Ms. Wivell, to --

23 A. -- as outlined in the interrogatory response.

24 Q. Sir, I'm talking about something that occurred
25 in the mid-'80s which is not listed in the

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1 interrogatory response.

2 MR. SCHNEIDER: And then I would --

3 Q. Isn't it true that those steps were taken by BAT
4 Co and are not reflected in Brown & Williamson's
5 interrogatory responses?

6 MR. SCHNEIDER: Objection to the form. And
7 what I was going to state was that Mr. Lowther used
8 the year 1995; I believe he meant 1985.

9 Q. Well let me restate my question.

10 Sir, isn't it true that in the mid-'80s, steps
11 were taken by BAT Co to route materials to Brown &
12 Williamson without them being shown on the normal
13 routing slips?

14 A. It is my understanding that for a -- a period of
15 time in 1985, research reports were routed to Mr.
16 Maddox, who is one of Brown & Williamson's outside
17 counsel, for the purposes of provision of legal
18 advice, and that the arrangement at that time was not
19 to include reference to Mr. Maddox or Brown &
20 Williamson on the routing slips, that's correct. And
21 I believe the facts of that -- that instance have
22 been included in the interrogatory response.

23 Q. Well, sir, isn't it also true that BAT Co took
24 steps in the mid-'80s to make sure that information
25 that it sent to Brown & Williamson not fall into the

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1 hands of plaintiffs' lawyers?

2 MR. SCHNEIDER: Objection to the form.

3 A. I have not prepared myself to talk about steps
4 taken by BAT Co. I have undertaken to talk about the
5 interrogatory response prepared by Brown &
6 Williamson. I do not know what specific steps taken
7 by BAT Co were made.

8 To the extent that circumstances have been
9 disclosed in the interrogatory response that
10 indicated actions taken by BAT Co, I am aware of some
11 facts, but I cannot speak for all facts related to
12 BAT Co.

13 Q. Well sir, certainly, sir, you agree that Ernie
14 Pebbles had information concerning the steps that
15 were taken by BAT Co to try and keep Brown &
16 Williamson, at least on paper, off the routing for
17 certain sensitive materials; isn't that true?

18 MR. SCHNEIDER: Object to the form.

19 A. I don't know what connection Ernie -- Ernie
20 Pebbles had with this -- this circumstance that I was
21 discussing earlier.

22 Q. Sir, when Ernie Pebbles was interviewed as part
23 of the interview process for the collection of
24 information that appears on Exhibit 26, he disclosed
25 this attempt to try and keep R&D documents from BAT

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1 Co out of plaintiffs' hands; didn't he, sir?

2 MR. SCHNEIDER: Object to the form,
3 misleading.

4 A. I do not know what facts were disclosed by Mr.
5 Pebbles in connection with preparing the
6 interrogatory response.

7 Q. Didn't you feel that would be information that
8 would be important for your deposition here today so
9 you could be fully informed?

10 A. My response is that in connection with this
11 routing issue that we are discussing right now, I
12 have certain facts. I understand that for a period
13 of time between early 1985 and as late probably as --
14 as -- or earlier than October 1985, research reports
15 were for period of time routed to an outside counsel
16 for the provision of legal advice to BAT Co
17 scientists. It is further my understanding that
18 while conducting inquiries into the circumstances of
19 this -- this -- this -- this arrangement, Brown &
20 Williamson understands that some 18 to 21 research
21 reports were issued in that period, and all of them
22 have been found with the exception of three within
23 the records of Brown & Williamson. Those three have
24 been disclosed in this interrogatory response, and it
25 does not indicate any policy of Brown & Williamson to

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1 avoid discovery in any -- in any case.

2 MS. WIVELL: Move to strike,
3 non-responsive.

4 Q. Sir, didn't you feel it would be important to
5 get all of the facts concerning why in 1985 Brown &
6 Williamson was taken off BAT Co's circulation list
7 and R&D reports started to go to a lawyer at an
8 outside law firm?

9 MR. SCHNEIDER: Object to the form.

10 A. It's my understanding that the facts are as
11 reported in the interrogatory response.

12 Q. And those facts are that Brown & Williamson
13 wanted these reports sent to Wyatt, Tarrant & Combs
14 for legal advice. Is that Brown & Williamson's
15 response?

16 A. I can't speculate on the motivation. I can tell
17 you that it is my understanding that these reports
18 were sent to Mr. Maddox for the provision of legal
19 advice back to BAT Co, and it is possible that the
20 reasons for that were to have legal advice provided
21 back to U.K. scientists so that they could better
22 communicate the facts of their research in a way that
23 it may not be misinterpreted in -- in the U.S.A. or
24 elsewhere in the world.

25 Q. Sir, isn't it true that the attempt to -- or

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1 the -- let me start again.

2 Isn't it true that the direction to send these
3 reports to Wyatt, Tarrnt & Combs instead of to Brown
4 & Williamson was to attempt to keep them out of the
5 hands of plaintiffs' attorneys who had brought suit
6 in the United States in smoking-and-health-related
7 cases and were asking for documents that would
8 include those research and development reports?

9 MR. SCHNEIDER: Object to the form.

10 A. No, I don't believe that is true.

11 Q. Sir, isn't it true that there was a plan between
12 Brown & Williamson and BAT Co to try and keep
13 contentious information out of the hands of
14 plaintiffs' lawyers in the United States by taking
15 care to specially route that information?

16 MR. SCHNEIDER: Object to the form.

17 A. I --

18 MR. SCHNEIDER: Outside the scope.

19 A. I -- I don't believe -- I don't believe that --
20 that that is the case.

21 Q. You haven't investigated this matter, though;
22 have you, sir?

23 A. I can tell you that Brown & Williamson has done
24 a due diligence review to establish the facts of any
25 circumstance where smoking-and-health documents --

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1 its only copy of such documents have either been
2 destroyed or have been routed to third parties so
3 they're not received, and Brown & Williamson has
4 included circumstances where it believes such events
5 may have occurred in its interrogatory response.

6 Q. Well isn't it true that Brown & Williamson left
7 out of its interrogatory response the plan by BAT Co
8 to limit communications with Brown & Williamson to
9 assure that communications were kept out of the hands
10 of plaintiffs' lawyers?

11 MR. SCHNEIDER: Object to the form.

12 A. I do not know whether there was such a plan.

13 (Plaintiffs' Exhibit 70 was marked
14 for identification.)

15 BY MS. WIVELL:

16 Q. Sir, showing you what's been marked as
17 Plaintiffs' Exhibit 70, it is a memo from L.C.F.
18 Blackman to a distribution list of people who are BAT
19 Co scientists; correct?

20 MR. SCHNEIDER: Object to the form. And
21 again, this is an exhibit that was not designated.

22 A. I -- I can confirm that it appears to be from an
23 L.C.F. Blackman. I do not know who these people are
24 on the distribution list.

25 Q. All right. It's a very short memo. Could you

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1 just take a moment to read it.

2 A. I have read it.

3 Q. Sir, am I correct in identifying Exhibit 70 as a
4 BAT Co document Bates numbered 107355836 dated
5 October 5th, 1984?

6 A. Yes, you are.

7 Q. Sir, this document was written after the group
8 legal conference that's referred to in Exhibit 69;
9 right?

10 MR. SCHNEIDER: Objection to the form.

11 A. That's correct.

12 Q. And it says, "Until further notice all
13 communications i.e., reports, letters, memos,
14 telexes, et cetera to Brown & Williamson Tobacco
15 Corporation, must be transmitted via your Research
16 Manager to Dr. L.C.F. Blackman for forwarding to
17 Louisville." Have I read that correctly so far?

18 A. Yes, you have.

19 Q. Goes on to say, "This may cause some unavoidable
20 delay;" correct?

21 A. That's correct.

22 Q. It says that the reason for this has already
23 been explained to you and will be further discussed
24 with you next week by Dr. M. J. Hardwick, right?

25 A. That's correct.

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1 Q. Sir, isn't it true that the reason for that was
2 to try and keep documents that had been generated at
3 BAT Co out of the hands of plaintiffs' lawyers in the
4 United States who had provided Brown & Williamson
5 with discovery requests that would cover those
6 documents?

7 MR. SCHNEIDER: Objection to the form.

8 A. I don't know whether that's true, but I can see
9 no indication in this document that would make me
10 think that that even might be the case.

11 Q. Of course you weren't with Brown & Williamson at
12 this time; were you, sir?

13 A. No, I was not.

14 Q. Were you with BAT Co at the time?

15 A. No, I was not.

16 Q. Or with -- were you with any -- sorry, let me
17 start again.

18 Were you with any BAT Group company at the time?

19 A. No, I was not.

20 Q. Sir, isn't it true that after this it was
21 determined that only non-contentious material, such
22 as schedules for visiting and so forth, would be sent
23 to Brown & Williamson or at least shown to be sent to
24 Brown & Williamson?

25 MR. SCHNEIDER: Object to the form.

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1 A. Please restate the question.

2 Q. Certainly.

3 Isn't it true that after this memo dated October
4 5th, 1984 was written, that it was determined by BAT
5 Co that only non-contentious material would be sent
6 to Brown & Williamson or at least would be shown on
7 the circulation list as sent to Brown & Williamson?

8 MR. SCHNEIDER: Object to the form.

9 A. I don't know whether that's true.

10 (Plaintiffs' Exhibit 71 was marked
11 for identification.)

12 BY MS. WIVELL:

13 Q. Showing you what's been marked as Plaintiffs'
14 Exhibit 71, it is a BAT Co document Bates numbered
15 107355835; correct?

16 MR. SCHNEIDER: Objection to the form.

17 This is another document not designated.

18 A. It has --

19 This document has that Bates number, yes.

20 Q. And it is an October 11th, 1984 memo to the
21 communications group from M. J. Hardwick; right?

22 A. That's correct.

23 Q. Would you take a moment or two to read it to
24 yourself, please.

25 A. I have read it.

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1 Q. This document sets forth directions that no
2 document be sent to Brown & Williamson without first
3 being cleared by research managers; right?

4 A. That's correct.

5 Q. And isn't it true that this document also
6 directs that the material -- if the material is
7 totally non-contentious, that the research managers
8 can pass it on to Brown & Williamson?

9 A. Yes, it does say --

10 MR. SCHNEIDER: Objection to the form.

11 A. It says that they will be responsible for final
12 authorization and dispatch, yes.

13 Q. Now what do you understand "totally
14 non-contentious" to mean?

15 A. I can't speculate as to what --

16 I don't know what Mr. Hardwick meant by
17 "non-contentious." He does indicate that it's, for
18 example, schedules for visiting.

19 Q. Now if there was any doubt concerning the
20 contents of a document, a procedure was set up where
21 the document was sent -- would be sent to Dr. L.C.F.
22 Blackman for clearance; correct?

23 A. That's what it says.

24 Q. And isn't it true that after this document was
25 written, a procedure was established that if -- if a

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1 document was contentious, it either was sent to Brown
2 & Williamson without being shown that it was sent to
3 Brown & Williamson, or sent to Wyatt, Tarrant &
4 Combs?

5 MR. SCHNEIDER: Object to the form.

6 A. No, I don't believe that that is true as you
7 described it. I do believe that for a period of time
8 in early 1995 forward, reports from BAT Co designated
9 for Brown & Williamson were -- the procedure was
10 established to have those reports routed through a
11 U.S.A. legal counsel for the provision of advice back
12 to BAT Co scientists and legal staff.

13 Q. Well isn't it also true that BAT Co was taken
14 off the circulation list of various documents?

15 MR. SCHNEIDER: Objection to the form.

16 Q. I'm sorry, let me rephrase the question.

17 Isn't it true that Brown & Williamson was also
18 taken off the circulation list of various BAT Co
19 documents?

20 MR. SCHNEIDER: Objection to the form.

21 A. It is my understanding that part of that
22 procedure was not to show Brown & Williamson on the
23 distribution lists.

24 Q. But Brown & Williamson sometimes got those
25 documents; didn't they?

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1 A. It's my understanding that Mr. Maddox, who was
2 the recipient of the documents, recalls one
3 circumstance where he believes he forwarded on to
4 Brown & Williamson. It is also my understanding that
5 as part of the due diligence research undertaken by
6 Brown & Williamson, all but three of the research
7 reports written in this period which may conceivably
8 but not definitely would normally have been sent to
9 Brown & Williamson were in fact in our files.

10 Q. Well sir, isn't it true that if one of the BAT
11 Co reports were considered sensitive, Brown &
12 Williamson's name was taken off so that the document
13 wouldn't land in the hands of plaintiffs' attorneys
14 who were suing Brown & Williamson?

15 MR. SCHNEIDER: Objection to the form.

16 A. That is not my understanding. My understanding
17 is that it was a -- a procedure established to route
18 research reports to Mr. Maddox rather than to Brown &
19 Williamson for the provision of legal advice. These
20 reports were at the same time being issued to other
21 B.A.T. companies, and that these reports have, with
22 the exception of three, been located within Brown &
23 Williamson's files.

24 Q. Sir, isn't it true that the reason that Brown &
25 Williamson wasn't shown on the distribution list is

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1 because BAT Co and Brown & Williamson didn't want
2 sensitive material showing up in Brown & Williamson's
3 files so it would have to be produced in product-
4 liability suits?

5 MR. SCHNEIDER: Object to the form.

6 A. It is my understanding that arrangements like
7 this may have been entered into for the purposes of
8 educating scientists in BAT Co in how best to present
9 the facts of their research so as to avoid
10 misinterpretation in a different regulatory and legal
11 environment. It is my understanding that the
12 arrangement with Mr. Maddox was entered into along
13 those lines. And this document that you have showed
14 me, Exhibit No. 71, does not indicate anything about
15 contentious documents not being sent to Brown &
16 Williamson.

17 Q. Well let me ask you this: Apparently there was
18 some problem with giving Wyatt, Tarrant & Combs a
19 copy and giving Brown & Williamson a copy; right? Is
20 that --

21 Was there a problem with that?

22 MR. SCHNEIDER: Object to the form.

23 A. It's not my understanding that there was a
24 problem. It's my understanding that the procedure
25 was for reports which would normally have been sent

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1 to Brown & Williamson to be routed through to Mr.
2 Maddox for the provision of legal advice for a period
3 of time.

4 Q. So I want to make sure I've got this perfectly
5 clear. In order to provide legal advice to BAT Co
6 scientists, a procedure was established whereby Mr.
7 Maddox received reports that Brown & Williamson used
8 to get. Have I got it right so far?

9 MR. SCHNEIDER: Object to the form.

10 A. Yes, Mr. Maddox was receiving reports which
11 otherwise would normally have been sent directly to
12 Brown & Williamson for a short period of time.

13 Q. Well I don't understand why Mr. Maddox couldn't
14 get a copy and Brown & Williamson couldn't get a copy
15 too. Can you explain that to me?

16 A. I -- I don't know the reason for it. I believe
17 that was the procedure, and my understanding is that
18 Mr. Maddox simply provided legal advice back to BAT
19 Co and that by and large his understanding was that
20 he forwarded them on to Brown & Williamson.

21 Q. Sir, isn't it true that Mr. Maddox got involved
22 in that only as a ruse to try and protect these
23 documents from discovery in the United States?

24 MR. SCHNEIDER: Object to the form.

25 A. I don't believe that is true.

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1 Q. And isn't it true that Mr. Kendrick Wells has
2 written memos suggesting ways to try and protect
3 documents that Brown & Williamson received from BAT
4 Co from production by creating just such ruses?

5 MR. SCHNEIDER: Object to the form.

6 A. I don't know that --

7 I don't know whether Mr. Wells has written such
8 a document.

9 Q. You've not read the allegedly stolen document
10 that Merrill Williams took from Wyatt, Tarrant &
11 Combs, I take it?

12 A. Are you referring to the deadwood document?

13 Q. No, sir, I am not. I take it --

14 Is that the only document from Mr. Wells that
15 you've read?

16 A. I may have read other notes from Mr. Wells.

17 Q. Have you read documents from Mr. Wells that are
18 available on the Internet which suggest that Brown &
19 Williamson created just such a legal ruse to try and
20 protect BAT Co R&D documents from discovery by
21 American plaintiffs' lawyers?

22 MR. SCHNEIDER: I object to the form of the
23 question to the extent you are trying to ask
24 questions concerning privileged, stolen documents.

25 A. I have not read any such document.

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1 Q. Sir, are you aware as Brown & Williamson's
2 spokesperson here today that Kendrick Wells wrote a
3 document which suggests routing BAT Co R&D documents
4 to lawyers so that they would not have to be produced
5 in discovery in America?

6 MR. SCHNEIDER: Object to the form.

7 A. I don't know that.

8 Q. Your -- your lawyers haven't showed you that
9 document?

10 MR. SCHNEIDER: Object to the form.

11 A. It's my understanding that if such a document
12 exists, it is a privileged document.

13 Q. Such a document is available on the Internet;
14 isn't it, sir?

15 A. I don't know whether it's available on the
16 Internet.

17 Q. But you understand that such a document exists;
18 right?

19 MR. SCHNEIDER: Object to the form.

20 A. I do not know that such a document exists.

21 Q. Well sir, are you aware that it was suggested
22 that Dr. Sanford be deputized as part of the legal
23 department in order to -- so that he could obtain
24 these documents and that he could then keep them from
25 being discovered in -- by plaintiffs' lawyers in

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1 product-liability suits in the United States?

2 MR. SCHNEIDER: Object to the form.

3 A. I do not know whether that's the case.

4 Q. All right. But you do know, don't you, that BAT
5 Co attempted to exclude sensitive material by not
6 showing Brown & Williamson on the distribution list;
7 correct?

8 MR. SCHNEIDER: Object to the form.

9 A. I do know that a procedure was entered into
10 temporarily in 1985 for the purposes of not showing
11 Brown & Williamson on the distribution list and for
12 the purposes of -- of providing legal advice to BAT
13 Co scientists. I do not believe that that was an
14 attempt to avoid any discovery activities.

15 Q. Well just so we're clear here, in the 1350
16 documents that were provided in Dewey, were any of
17 the BAT Co R&D reports that Brown & Williamson
18 received provided to those plaintiffs' attorneys?

19 A. I have not prepared myself to respond on the
20 contents of documents provided in the Dewey case.

21 Q. So you just don't know one way or the other; do
22 you, sir?

23 A. I do not know.

24 (Plaintiffs' Exhibit 72 was marked
25 for identification.)

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1 BY MS. WIVELL:

2 Q. Sir, showing you what's been marked as
3 Plaintiffs' Exhibit 72, am I correct that this is a
4 document dated January 3rd, 1985 from BAT -- BAT Co
5 Bates numbered 107355833?

6 A. That's correct.

7 MR. SCHNEIDER: Object to the form. Again,
8 this is a document not designated.

9 Q. Sir, this is a January 3rd, 1985 memo from M. J.
10 Hardwick?

11 A. That's right.

12 Q. And the subject is correspondence to Brown &
13 Williamson; right?

14 A. Yes, it is.

15 Q. Now Mr. Hardwick referred -- have you --
16 Have you taken a moment to read it? Please do.

17 A. I've read it.

18 Q. This document describes a process to deal with
19 reports that are considered sensitive; right?

20 A. It deals with correspondence to Brown &
21 Williamson, and --

22 Q. And he --

23 I'm sorry, go ahead.

24 A. -- and it mentions the issue of sensitivity,
25 yes.

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1 Q. And if something was considered sensitive, a
2 special procedure was entered into concerning the
3 transmission of that to Brown & Williamson; right?

4 A. Yes. And it's my understanding this would not
5 be inconsistent with the procedure that was set up
6 that I described earlier about the routing of reports
7 to Mr. Maddox temporarily.

8 Q. And all information that was destined for Brown
9 & Williamson, according to this memo, was to have
10 been reviewed by either Alan Heard, Ian Ayres,
11 Richard Binns or M. J. Hardwick; correct?

12 A. That's correct.

13 Q. And if the material was non-contentious,
14 clearance for transmission was granted; right?

15 A. Apparently so.

16 Q. But if any sensitive material -- I'm sorry, let
17 me start again.

18 But if any material was sensitive, it was to be
19 sent by the research manager to Millbank for
20 clearance; right?

21 A. That's what the memo indicates, yes.

22 Q. And there was --

23 It also indicates that any report that was
24 considered sensitive, the names of the usual Brown &
25 Williams recipients would not be included on the

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1 distribution list; right?

2 MR. SCHNEIDER: Object to the form.

3 A. That's what it says.

4 Q. And it's -- it's your testimony that not only
5 were the names of the usual recipients who got these
6 reports deleted from the distribution list, but also
7 they were then sent to a lawyer; is that right?

8 MR. SCHNEIDER: Object to the form.

9 A. It's my testimony that for a period of time
10 consistent with the timing of this memo, research
11 reports from BAT Co were routed via Mr. Maddox. It
12 is my understanding that, and having read this note,
13 there was a period of time when there were some
14 concerns within Brown & Williamson and BAT Co about
15 the communication of scientific research findings
16 because of the potential misinterpretation of some of
17 those findings when read in a different legal and
18 regulatory environment by plaintiffs or whatever, and
19 it seems to me from reading this memo that this is
20 evidence of steps being taken by scientists in BAT Co
21 to comply with that procedure and to make sure that
22 it -- it happens appropriately.

23 Q. So I'm correct, then, that these procedures that
24 have been discussed in this series of memos were
25 because of a shared concern between Brown &

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1 Williamson and BAT Co about the information getting
2 into the hands of and being potentially
3 misinterpreted by American plaintiffs' lawyers; is
4 that right?

5 MR. SCHNEIDER: Object to the form.

6 A. It was my testimony that there -- there were
7 concerns at this time about misinterpretation of
8 scientific facts, and steps were taken to educate the
9 people who were recording these facts in their
10 reports in order to reduce the possibility of such
11 misinterpretation, whether that misinterpretation is
12 by plaintiffs' lawyers or whoever.

13 Q. But just so we're clear here, the steps that
14 were taken that we have seen in these -- this series
15 of memos reflects a concern by both Brown &
16 Williamson and BAT Co concerning American
17 product-liability litigation; correct?

18 MR. SCHNEIDER: Object to the form.

19 A. I don't know whether the concern was about
20 American product liability exposure or not. It is my
21 understanding that concerns had been raised about how
22 results are communicated. To avoid
23 misinterpretation, steps were taken to educate these
24 scientists in how to communicate the facts
25 appropriately.

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1 Q. Well sir, let me see if I've got this right.

2 The reports that were going out of BAT Co, they took
3 the names of the Brown & Williamson recipients off
4 those reports; right?

5 MR. SCHNEIDER: Object to the form,
6 misleading.

7 A. I don't believe that is the case. My
8 understanding is that Brown & Williamson was not
9 listed on the distribution list. It is not a
10 question of -- of Brown & Williamson being deleted
11 from an existing distribution list.

12 Q. Well it says in Exhibit 72 that where any G.R. &
13 D.C. report is considered sensitive, the names of the
14 usual Brown & Williamson recipients must not be
15 included on the distribution list; right?

16 A. Yes, it does.

17 Q. Now those reports were then sent on to Mr.
18 Maddox at Wyatt, Tarrant & Combs; right?

19 A. My understanding is that a procedure was
20 established to do such a thing. Mr. Maddox, I
21 believe, could only recall one report of this nature
22 which he indicated he had sent on to Brown &
23 Williamson. It is further my understanding that
24 during the period of this -- of this arrangement,
25 through our inquiries we have ascertained the number

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1 of reports issued by BAT Co, we have established some
2 reports which do not show distribution to Brown &
3 Williamson but have been provided to other companies
4 in the BAT Group which one could speculate may have
5 been destined for Brown & Williamson, and we have
6 found all but three of those in the files of Brown &
7 Williamson. And where they're responsive, they have
8 been produced in this case.

9 MS. WIVELL: Sir, I move to strike,
10 non-responsive.

11 Q. My question has to do with those reports were
12 sent on, then, to Mr. Maddox; right?

13 MR. SCHNEIDER: Objection to the form,
14 argumentative, asked and answered.

15 A. As I said, I believe that the procedure was for
16 research reports for this period of time to be routed
17 through Mr. Maddox, as disclosed in our interrogatory
18 response.

19 Q. But Mr. Maddox was not shown on the routing or
20 distribution slips for the documents he received;
21 correct?

22 A. I believe he was not.

23 Q. Brown & Williamson was not and Mr. Maddox was
24 not; right?

25 A. I believe that's correct.

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1 Q. But Mr. Maddox was instructed to send on these
2 reports that he received to Brown & Williamson;
3 correct?

4 A. I do not know what instructions Mr. Maddox
5 received. I believe that he was asked to provide
6 legal advice. I believe that his recollection is
7 that he did send reports on to Brown & Williamson.

8 Q. Who is R. J. Pritchard?

9 A. I believe Mr. Pritchard is a former chief
10 executive of Brown & Williamson.

11 (Plaintiffs' Exhibit 73 was marked
12 for identification.)

13 BY MS. WIVELL:

14 Q. Sir, showing you what's been marked as
15 Plaintiffs' Exhibit 73, this is a BAT Co document
16 Bates numbered 104580800; correct?

17 A. Yes, it is.

18 Q. And this is a letter from R. J. Pritchard to
19 Mike Hardwick at G.R. & D.C. in Southampton; correct?

20 A. Yes, it is.

21 Q. Why don't you take a moment and review this
22 document.

23 A. I have read it.

24 Q. Sir, this document asks -- I'm sorry.

25 This document written by Mr. Pritchard asks Mr.

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1 Hardwick to arrange for all reports and materials for
2 worldwide distribution emanating from G.R. & D.C. to
3 be sent to Robert Maddox, correct?

4 A. Yes, it does.

5 Q. It also instructs that his firm should not be
6 listed as a distributee on the documents, nor should
7 Brown & Williamson; correct?

8 A. Yes, it does.

9 Q. And then it says Any mail to Maddox should be
10 accompanied by a simple letter, cover letter
11 indicating that BAT Millbank has asked that he should
12 receive it; right?

13 A. Yes, it does.

14 Q. And then the documents were to be sent on to
15 other recipients; correct?

16 A. It's my understanding that documents were sent
17 to other recipients at approximately the same time
18 that they were sent to Mr. Maddox.

19 Q. Sir, these are the instructions that you were
20 referring to concerning Mr. Maddox and his supposed
21 delivering of legal advice; correct?

22 MR. SCHNEIDER: Objection to the form.

23 A. I don't believe these are instructions to Mr.
24 Maddox. They're instructions by Mr. Pritchard, who
25 at this time was a BAT Co employee, to one of the

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1 research managers in nineteen ninety -- 1985.

2 Q. But these are instructions about Mr. Maddox and
3 what BAT Co should do with its R&D reports; correct?

4 A. I believe that's correct.

5 Q. Sir, isn't it true that about the same time
6 these procedures were being established so that Brown
7 & Williamson wasn't being shown on the distribution
8 list of various BAT Co documents, that Kendrick Wells
9 made a suggestion that all of the deadwood be removed
10 from Brown & Williamson's R&D files?

11 MR. SCHNEIDER: Object to the form.

12 A. Could you repeat the question, please?

13 Q. Certainly.

14 Isn't it true that at about the same time that
15 these procedures were being established so that Brown
16 & Williamson was not shown on the distribution list
17 of various BAT Co documents, that Kendrick Wells made
18 a suggestion that all the deadwood be removed from
19 Brown & Williamson's R&D files?

20 A. It's my understanding that Mr. Wells'
21 memorandum, his file note, was dated in January,
22 which was consistent as to timing with this
23 arrangement. But I don't believe, other than in
24 timing, that the two events are related.

25 Q. And on what facts do you base that assertion,

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1 sir?

2 A. Based on my understanding of the circumstances
3 surrounding Mr. Wells' memorandum, I believe that
4 that file note was relating to how to deal with
5 excess files which were held by Brown & Williamson in
6 its research files, it had no connection with routing
7 of -- of BAT Co reports.

8 Q. You're suggesting it's purely coincidence that
9 within the same week J. R. Pritchard instructs Mike
10 Hardwick to take Brown & Williamson's name off
11 various R&D documents and send them to a Louisville,
12 Kentucky lawyer, and it's just coincidence that
13 occurred within seven days of Mr. Wells suggesting
14 that the deadwood, including the materials that Brown
15 & Williamson received from BAT Co, be eliminated from
16 the R&D files of Brown & Williamson.

17 MR. SCHNEIDER: Objection to the form,
18 outside the scope.

19 A. I don't know that I would characterize the fact
20 that two documents have a date within seven days of
21 each other, that that is good evidence that there's a
22 close connection between them. I mean clearly they
23 were around about the same time, but they related to
24 different events in my view.

25 MS. WIVELL: All right. Why don't we stop

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1 there for the day.

2 THE REPORTER: Off the record, please.

3 (Deposition recessed at 5:15 o'clock p.m.)

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1 C E R T I F I C A T E

2 I, Richard G. Stirewalt, hereby certify
3 that I am qualified as a verbatim shorthand reporter;
4 that I took in stenographic shorthand the testimony
5 of RICHARD M. LOWTHER at the time and place
6 aforesaid; and that the foregoing transcript
7 consisting of pages 1 through 246 is a true and
8 correct, full and complete transcription of said
9 shorthand notes, to the best of my ability.

10 Dated at Washington, D.C., this 7th day of
11 May, 1997.

12

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14

15 RICHARD G. STIREWALT

16 Registered Professional Reporter

17 Notary Public

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1 C E R T I F I C A T E

2 I, RICHARD M. LOWTHER, the deponent, hereby
3 certify that I have read the foregoing transcript
4 consisting of pages 1 through 246, and that said
5 transcript is a true and correct, full and complete
6 transcription of my deposition except:

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15 RICHARD M. LOWTHER

16 Deponent

17

18 Sworn and subscribed to before me this day
19 of , 1997.

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23 Notary Public

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25 My commission expires .

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